

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 821

UNITED STATES OF AMERICA, APPELLANT

v.

GREATER BUFFALO PRESS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

INDEX

| | Page |
|---|------|
| Relevant docket entries..... | 1 |
| Complaint by the United States filed January 6, 1961..... | 4 |
| Answer of Greater Buffalo Press, Inc., et al. filed March 1, 1961..... | 14 |
| Deposition testimony of Joseph J. Gorman taken April 18, 1961..... | 21 |
| Deposition testimony of William Hammond taken April 18, 1961..... | 85 |
| Transcript of proceedings held before the Hon. John O. Henderson, U.S. District Judge, Western District of New York, on October 25, 1961..... | 140 |
| Appearances..... | 141 |
| Testimony of Joseph J. Gorman: | |
| Direct..... | 142 |
| Cross..... | 167 |
| Redirect..... | 186 |
| Recross..... | 189 |
| Testimony of Joseph Clinton: | |
| Direct..... | 190 |
| Cross..... | 204 |
| Transcript of proceedings held before the Hon. John O. Henderson, U.S. District Judge, Western District of New York, on October 26, 1961..... | 214 |
| Appearances..... | 215 |
| Testimony of Joseph Clinton: | |
| Cross..... | 215 |
| Redirect..... | 227 |

II

| | Page |
|---|------|
| Testimony of William J. Hammond: | |
| Direct..... | 227 |
| Cross..... | 249 |
| Redirect..... | 261 |
| Recross..... | 262 |
| Testimony of Robert D. Smith: | |
| Direct..... | 263 |
| Cross..... | 267 |
| Testimony of Robert Brader: | |
| Direct..... | 272 |
| Cross..... | 276 |
| Redirect..... | 277 |
| Testimony of Daniel Fisher: | |
| Direct..... | 278 |
| Cross..... | 281 |
| Testimony of William J. Williams: | |
| Direct..... | 281 |
| Cross..... | 283 |
| Findings of Fact and Conclusions of Law of the District Court dated June 22, 1962. | 290 |
| Order for temporary injunction dated June 22, 1962. | 295 |
| Transcript of proceedings held before the Hon. John O. Henderson, U.S. District Judge, Western District of New York, on December 18, 1962. | 300 |
| Appearance..... | 301 |
| Deposition of Jack R. Hornady..... | 319 |
| Testimony of Paul Lynde: | |
| Direct..... | 424 |
| Cross..... | 450 |
| Transcript of proceedings held before the Hon. John O. Henderson, U.S. District Judge, Western District of New York, on December 19, 1962. | 463 |
| Appearances..... | 463 |
| Testimony of Paul Lynde: | |
| Cross..... | 463 |
| Redirect..... | 485 |
| Recross..... | 491 |
| Testimony of Robert B. Smith—direct. | 496 |
| Findings of Fact, Conclusions of Law and Order of District Court dated February 19, 1963. | 513 |
| Notice of plaintiff to amend complaint dated November 17, 1964. | 516 |
| Stipulation between the United States and the Hearst Corporation filed on June 16, 1965. | 518 |
| Stipulation between the United States and the Hearst Corporation filed on July 21, 1965. | 519 |
| Final Judgment of the Court, with consent of the United States and Hearst Corporation, entered on August 31, 1965. | 520 |

III

| | |
|--|-------------|
| Transcript of trial held before the Honorable John O. Henderson commencing on October 12, 1965..... | Page 524 |
| Appearances..... | 524 |
| Testimony of Margaret Lutz: | |
| Direct..... | 560 |
| Preliminary..... | 583 |
| Direct..... | 598 |
| Testimony of John Walter Koessler: | |
| Direct..... | 853 |
| Cross..... | 899 |
| Redirect..... | 1090 |
| Recross..... | 1092 |
| Testimony of Joseph J. Gorman: | |
| Direct..... | 1099 |
| Cross..... | 1127 |
| Redirect..... | 1241 |
| Cross..... | 1244 |
| Recross..... | 1245 |
| Testimony of Earl Anderson (defense): | |
| Direct..... | 1248 |
| Cross..... | 1283 |
| Redirect..... | 1356 |
| Testimony of Earl Anderson (plaintiff): | |
| Direct..... | 1365 |
| Cross..... | 1397 |
| Redirect..... | 1400 |
| Testimony of Vernon J. Gamble: | |
| Direct..... | 1401 |
| Cross..... | 1406 |
| Redirect..... | 1408 |
| Prosecution exhibits: | |
| P-1..... | 1409 |
| P-2..... | 1415 |
| P-3..... | 1418 |
| P-4..... | 1418 |
| P-5..... | 1420 |
| P-6..... | 1708 |
| P-7..... | 1422 |
| P-10..... | 1423 |
| P-11..... | 1424 |
| P-12..... | 1425 |
| P-13..... | 1427 |
| P-14..... | 1430 |
| P-15..... | 1432 |
| P-16..... | 1434 |
| P-17..... | 1438 |
| P-18..... | 1439 |
| P-19..... | 1440 |
| P-20..... | 1440 |
| P-21..... | 1441 |
| P-22..... | 1443 |
| P-23..... | 1447 |

Prosecution exhibits—Continued

| | Page |
|--------|------|
| P-24. | 1458 |
| P-25. | 1458 |
| P-26. | 1460 |
| P-27. | 1461 |
| P-28. | 1469 |
| P-40. | 1472 |
| P-52. | 1473 |
| P-53. | 1474 |
| P-54. | 1477 |
| P-55. | 1482 |
| P-56. | 1483 |
| P-57. | 1489 |
| P-58. | 1490 |
| P-59. | 1491 |
| P-60. | 1491 |
| P-61. | 1709 |
| P-62. | 1823 |
| P-63. | 1824 |
| P-64. | 1830 |
| P-65. | 1831 |
| P-71. | 1832 |
| P-72. | 1834 |
| P-73. | 1493 |
| P-74. | 1494 |
| P-75. | 1498 |
| P-76. | 1499 |
| P-77. | 1499 |
| P-78. | 1500 |
| P-80. | 1500 |
| P-81. | 1501 |
| P-82. | 1502 |
| P-83. | 1502 |
| P-84. | 1503 |
| P-85. | 1504 |
| P-86. | 1504 |
| P-87. | 1505 |
| P-88. | 1505 |
| P-89. | 1510 |
| P-90. | 1512 |
| P-91. | 1513 |
| P-92. | 1513 |
| P-93. | 1515 |
| P-94. | 1517 |
| P-95. | 1844 |
| P-97. | 1518 |
| P-98. | 1519 |
| P-99. | 1520 |
| P-102. | 1523 |
| P-103. | 1523 |

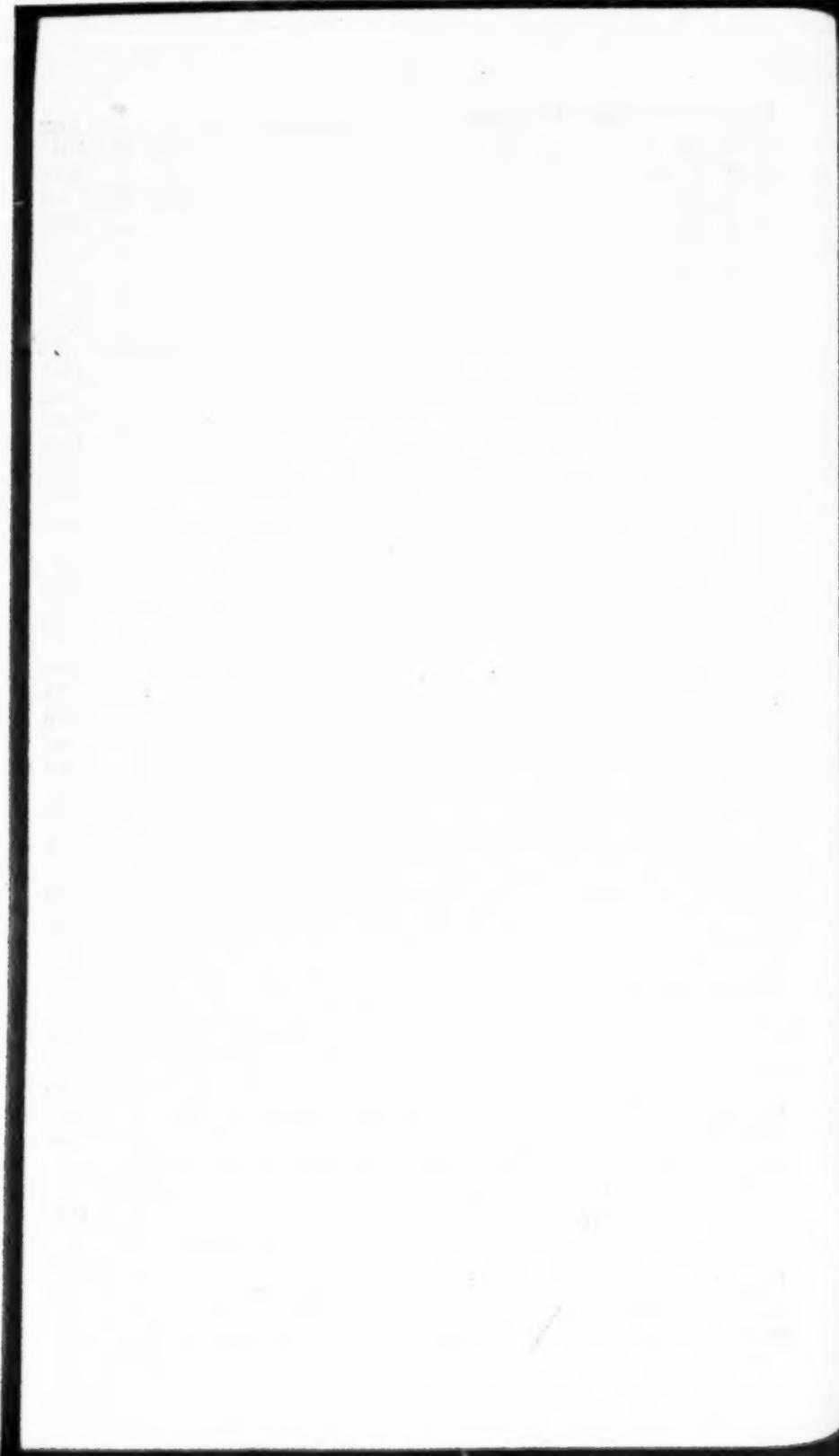
Prosecution exhibits—Continued

| | Page |
|------------|-----------------|
| P-104..... | 1529, 1845-1847 |
| P-105..... | 1530 |
| P-106..... | 1532, 1848-1849 |
| P-107..... | 1850 |
| P-108..... | 1537 |
| P-109..... | 1540 |
| P-110..... | 1542 |
| P-111..... | 1544 |
| P-112..... | 1559, 1851-1853 |
| P-113..... | 1561 |
| P-114..... | 1562 |
| P-115..... | 1563 |
| P-118..... | 1564 |
| P-119..... | 1567 |
| P-120..... | 1568 |
| P-121..... | 1570 |
| P-122..... | 1571 |
| P-123..... | 1573 |
| P-124..... | 1854 |
| P-125..... | 1855 |
| P-126..... | 1574 |
| P-127..... | 1859 |
| P-128..... | 1578 |
| P-129..... | 1580 |
| P-130..... | 1581 |
| P-131..... | 1583 |
| P-132..... | 1585 |
| P-133..... | 1586 |
| P-134..... | 1587 |
| P-135..... | 1589 |
| P-137..... | 1860 |
| P-138..... | 1865 |
| P-141..... | 1873 |
| P-155..... | 1590 |

Defense exhibits:

| | |
|----------|------|
| D-2..... | 1591 |
| D-4..... | 1591 |
| D-5..... | 1592 |
| D-6..... | 1593 |

| | |
|--|------|
| Complaint by the United States as amended October 14, 1965..... | 1597 |
| Plaintiff's proposed findings of fact and conclusions of law..... | 1608 |
| Excerpts from transcript of proceedings held before the Hon. John O. Henderson, U.S. District Judge, Western District of New York, on December 17, 1969..... | 1632 |
| Findings of Fact and Conclusions of Law made by the district court on May 26, 1970..... | 1691 |
| Judgment entered by the district court on May 26, 1970..... | 1706 |
| Notice of appeal filed by the United States on July 24, 1970..... | 1706 |
| Supreme Court's Order of January 11, 1971 noting probable jurisdiction..... | 1707 |



1 United States District Court, Western District of
 New York

Civil Action No. 9004

UNITED STATES OF AMERICA, PLAINTIFF

v.

GREATER BUFFALO PRESS, INCORPORATED, ET AL., DEFENDANTS
RELEVANT DOCKET ENTRIES

Date

1961

- Jan. 6..... Filed complaint.
Feb. 28..... Filed answer of Hearst Corp.
Mar. 1..... Filed answer of Greater Buffalo Press et al.
 2..... Filed answer of Newspaper Enterprise Association.
July 7..... Filed stipulation and order continuing preliminary injunction, entered order—Henderson, J (notice to Mr. Moore).
 F-3
Oct. 25-26.... Hearing on motion for temporary injunction—Decision reserved.

1962

- June 25..... Filed findings of fact and conclusions of law.
 25..... Filed and entered order for temporary injunction—Henderson, J. F-10 (notice to Mr. Curtin, Mr. Miller, Mr. Moore, Mr. Hitchcock).

1963

- Feb. 19..... Filed findings of fact and conclusions of law and order modifying order of June 22/62, entered order—Henderson, J. F-2 (notice to Mr. Miller, Mr. Moore, Mr. Hitchcock).
 F-17
Mar. 7..... Filed motion of plaintiff to stay order of Feb. 19/63—ret.
 Mar. 11—Denied.
Apr. 5..... Filed stipulation and order amending order of Feb. 10/63—Henderson, J. (notice and copy to Mr. Moore). F-19

1964

- Dec. 28..... Filed Order that the defendant, Greater Buffalo Press Incorp., be permitted to transfer to its Dunkirk Plant the newspaper runs presently printed by defendant, Dixie Color Printing Corp., etc.—Henderson, J. (notice and copy to Mr. Curtin). F-39

- 1965*
- 2 June 14 Pretrial conference before Judge Henderson.
 16----- Filed stipulation re Judgment.
- July 21----- Filed stipulation re Judgment entered into on July 16, 1965.
 28----- Pretrial conference (JOH).
- Aug. 16----- Submission of amended order.
 31----- Filed stipulation re Final Judgment.
 31----- Filed final judgment restraining Hearst—Henderson, J. (notice to Messrs. Curtin and Miller). F-47
- Oct. 12----- Trial before Judge Henderson.
 13----- Trial continued.
 14----- Trial continued, decision reserved.
- 1966*
- Jan. 17----- Hearing re receipt of certain documents into evidence.
- Dec. 16----- Filed order that the color comic supplement for The Independent may hereafter be printed at the Lufkin, Texas plant, operated by Southwest Color Printing Corp., etc.—Henderson, J. (notice and copy to Messrs. Curtin and Moore). F-63
- 1967*
- June 27----- Trial continued from 1/19/66.
 28----- Trial continued.
 29----- Trial continued.
 30----- Trial continued.
- July 12----- Trial continued.
 13----- Trial continued, Mr. Moore renews motions made at end of Government's case—decision reserved.
 14----- Trial continued. Defendants renew motions—decision reserved. Mr. Moore moves to vacate injunction—injunction—decision reserved. Mr. Stephens moves to dismiss—decision reserved.
- 3
- 1967*
- July 28----- Filed order on consent permitting the removal of the printing of color comic supplements for the Farmington, New Mexico Times from the Wilkes Barre plant to the Lufkin, Texas plant—Henderson, J. (notice to Mr. Curtin and Mr. Moore). F-70
- 1969*
- Dec. 17----- Final Arguments—dec. res.

1970

- May 26..... Filed findings of fact and conclusions of law that the defts, Greater Buffalo Press, Inc., International Color Printing Southwest Color Printing Corp., Dixie Color Printing Corp., and Newspaper Enterprise Association, Inc. are entitled to judgment dismissing the complaint—Henderson, J. (notice to Messrs. Schroeder, Moore and Stevens). F-104
- May 26..... Filed Judgment on Decision by the Court-Clerk (notice and copy to Messrs. Schroeder; Raichle, Banning, etc. and Baker, Hostetler, etc.). F-104
- July 24..... Filed plaintiff's notice of appeal to the Supreme Court with certificate of service on Mr. Raichle and Messrs. Stevens and Karch of Baker, Hostetler, and Patterson.

1971

- Jan. 18..... Filed certified copy of order of U.S. Supreme Court noting probable jurisdiction.

[Caption Omitted in Printing]

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. 4), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", commonly known as the Clayton Act, in order to prevent and restrain violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Sections 3 and 7 of the Clayton Act.

2. The defendants transact business within the Western District of New York and are found therein.

THE DEFENDANTS

3. Greater Buffalo Press, Incorporated (hereinafter referred to as Greater Buffalo), a corporation organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, New York, is hereby made a defendant herein. Greater Buffalo engages in the printing of color comic supplements; it is the largest printer of color comic supplements in the United States. It maintains a printing plant at Buffalo, New York and maintains, through its subsidiaries,

The International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, plants at Wilkes-Barre, Pennsylvania, Lufkin, Texas and Sylacauga, Alabama, respectively. It also utilizes the printing facilities of the Great Lakes Color Printing Corporation of Dunkirk, New York. Greater Buffalo's business includes the sale of its color comic supplement printing services to newspapers and to comic feature syndicates. Greater Buffalo is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act.

4. The Hearst Corporation (hereinafter referred to as Hearst), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York, is made a defendant herein. Hearst, through its unincorporated division, King Features Syndicate (hereinafter referred to as King), is engaged in the business of licensing copyrighted newspaper features, including color comic features, to newspapers. King maintains a sales force, members of which regularly visit the offices of newspapers throughout

the United States. King also engages in the business of
6 selling color comic supplement printing services, not only
for the printing of its own copyrighted features, but for
the features of competing comic feature syndicates as well. King
contracts to provide color comic supplement printing services
with or without the copyrighted features which it licenses. It
does not engage in any printing but contracts with a printer to
fulfill its commitments for color comic supplement printing.
Hearst is charged with the violations, hereinafter alleged, of
Sections 1 and 2 of the Sherman Act and Section 3 of the
Clayton Act.

5. Newspaper Enterprise Association, Inc. (hereinafter referred to as NEA), a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cleveland, Ohio, is hereby made a defendant herein. NEA, the voting stock of which is owned by E. W. Scripps Company, Inc., Cincinnati, Ohio, is engaged in the business of licensing copyrighted newspaper features including color comic features, to newspapers. NEA is one of the largest such syndicates in the United States and maintains a sales force, members of which regularly visit the officers of newspapers throughout the United States. NEA also engages in the business of selling color comic supplement printing services, not only for the

printing of its own copyrighted features, but for the features of competing comic feature syndicates as well. NEA also contracts to provide color comic supplement printing services with or without the copyrighted features which it licenses. It does not engage in any printing but contracts with a printer to fulfill its commitments for color comic supplement printing. NEA is charged with the violations, hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

6. The International Color Printing Company, also known as International Color Printing Co. Inc. (hereinafter referred to as International), a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Wilkes-Barre, Pennsylvania, is hereby made a defendant herein. International engages in the printing of color comic supplements and operates two color printing plants in Wilkes-Barre, Pennsylvania. Since 1954, or prior thereto, International, pursuant to written contracts entered into with King, is, and has been, obligated to print color comic supplements exclusively for King. In or about June 1955, International's out-standing stock was purchased by the defendant, Greater Buffalo. International is charged with the violation, hereinafter alleged, of Section 7 of the Clayton Act.

7. Southwest Color Printing Corporation, a corporation organized and existing under the laws of the State of Texas, with its principal place of business in Lufkin, Texas, is hereby made a defendant herein, for purposes of relief.

8. Dixie Color Printing Corporation, a corporation organized and existing under the laws of the State of Alabama, with its principal place of business at Sylacauga, Alabama, is hereby made a defendant herein, for purposes of relief.

9. Whenever in this complaint reference is made to any act, deed or transaction on the part of the defendants, such allegation shall be deemed to mean that the officers, directors, agents or employees of said defendant authorized, ordered or did such act, deed or transaction for, or on behalf of, such defendant while actively engaged in the management, direction and control of its affairs. Whenever reference is made to any act, deed or transaction on the part of King, such allegation shall be deemed to mean that the officers, directors, agents or employees of the defendant Hearst authorized, ordered or did such act, deed or transaction while actively engaged in the management, direction and control of Hearst's affairs.

III

THE CO-CONSPIRATOR

10. Eastern Color Printing Company (hereinafter called Eastern), Waterbury, Connecticut, is hereby named as co-conspirator. Eastern engages in the business of printing, among other things, color comic supplements for sale to newspapers. It maintains its printing facilities in or near, and main offices at Waterbury, Connecticut.

11. Whenever in this complaint reference is made to any act on the part of a co-conspirator, such allegation shall be deemed to mean that the officers, directors, agents or employees of the named co-conspirator, authorized, ordered or did such act, deed or transaction for, or on behalf of, such co-conspirator while actively engaged in the management, direction and control of its affairs.

IV

DEFINITION

12. The term "color comic supplements", as used herein, means supplements to Sunday or Saturday newspapers, printed in color, and containing, among other things, copyrighted comic features.

V.

TRADE AND COMMERCE INVOLVED

13. Virtually every newspaper in the United States which publishes a Sunday edition distributes a color comic supplement with each copy of such edition. Color comic supplements range in size from four to twenty-four pages and consist of copyrighted features printed in color. The copyrighted features include, but are not limited to, comic strips, romance and adventure stories, cartoons, games and puzzles.

9 14. The rights to publish the copyrighted comic features which appear in color comic supplements are generally licensed to newspapers by persons or companies called "syndicates". Defendant Hearst, through its King division, and defendant NEA, as well as other syndicates, license the publication of comic features to newspapers, usually by written contract. Along with such rights the syndicates furnish the "matrices", or moulded designs, of such comic features. The

syndicates ship the matrices, for printing, to defendants Greater Buffalo or International, to co-conspirator Eastern, to other color comic supplement printers, or direct to newspapers which are equipped to print their own color comic supplements.

15. Approximately eighty-six percent (86%) of the total number of newspapers in the United States which distribute color comic supplements with their Sunday or Saturday editions do not print such supplements themselves. The color comic supplements distributed by such newspapers are printed by the defendants, Greater Buffalo and International, the co-conspirator Eastern, or by other printers of color comic supplements. Such printers generally provide the newsprint for the color comic supplements which they print, using for such printing color plates cast from the matrices received from King and NEA or from other comic feature syndicates. Some newspapers, principally large newspapers in major markets, and some newspaper chains, maintain facilities for printing color comic supplements and print their own color comic supplements.

16. The aforementioned color comic supplement printing service, including the casting of color plates from matrices, the furnishing of newsprint and the printing of the supplements, is obtained by newspapers through direct contract or arrangement with the defendant Greater Buffalo, the co-conspirator Eastern, one of the other color comic supplement printers, or by contract or arrangement with the comic features 10 syndicates, King and NEA. King and NEA, in turn, fulfill their contracts for printing through arrangements with defendant Greater Buffalo or one of its printing subsidiaries. The latter furnish the newsprint and print the color comic supplements that King and NEA supply to their newspaper customers.

17. During the period from 1954 to the present date, purchases of color comic supplement printing services from syndicates and from color comic supplement printing companies were approximately \$28,000,000 per year. Of such annual purchases approximately \$9,000,000 were made from Greater Buffalo, \$10,000,000 from King and \$1,500,000 from NEA. Thus, during the aforementioned period, Greater Buffalo, King and NEA accounted for approximately seventy-three percent (73%) of such purchases, or on the basis of color comic supplement units sold, approximately eighty percent (80%).

18. From 1954, or prior thereto, to the present date, King has maintained contracts with International, which operates two color printing plants in Wilkes-Barre, Pennsylvania. By the terms of such contracts and subject to certain conditions, International is, and has been, obligated to print color comic supplements exclusively for King. In addition, during the aforementioned period King has entered into arrangements or contracts with Greater Buffalo whereby Greater Buffalo has furnished newsprint and printed color comic supplements for supplement printing service customers of King.

19. Defendant NEA contracts with newspapers to furnish them with color comic supplement printing services. NEA arranges or contracts with Greater Buffalo and other printing companies, which actually furnish the newsprint and the color printing for NEA's newspaper customers.

20. Defendants Greater Buffalo, Hearst, NEA and International, and the co-conspirator Eastern, fulfill their contracts for color comic supplement printing through printing performed in plants in Buffalo, New York, Wilkes-Barre, Pennsylvania, Lufkin, Texas and Waterbury, Connecticut. The color comic supplements printed at these plants are shipped in interstate commerce to newspapers throughout the United States.

VI.

OFFENSES CHARGED

Violations of Section 1 of the Sherman Act

21. The defendants Greater Buffalo, Hearst and NEA, the co-conspirator Eastern, and others to the plaintiff unknown, have been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of this complaint, in restraint of the above-described interstate trade and commerce, in violation of Section 1 of the Sherman Act.

22. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action between the defendants Greater Buffalo and Hearst, others to the plaintiff unknown, and, since in or about November 1955, or prior thereto, the defendant NEA and the co-conspirator Eastern, the substantial terms of which have been and are:

(a) To refrain from soliciting color comic supplement printing business from each other's customers; and

(b) To maintain and stabilize the price of color comic supplement printing in the United States.

23. During the period of time covered by this complaint, the defendants and the co-conspirator, and others to the plaintiff unknown, for the purpose of effectuating the aforesaid combination and conspiracy, have done, among other things, the following:

12 (a) In or about January or February 1954, representatives of the defendants Greater Buffalo and King held meetings in New York City, New York, at which, among other things, they agreed that:

(1) Greater Buffalo and King would divide between themselves the business of supplying color comic supplement printing services to the Gannett newspapers published in Utica and Binghamton, New York; and

(2) Greater Buffalo would pay King fifty dollars (\$50) per week to refrain from offering to the Waterloo Courier, Waterloo, Iowa, prices below those of Greater Buffalo for color comic supplement printing, as long as Greater Buffalo would service this account.

(b) Greater Buffalo and King did those things they agreed to do, pursuant to the agreements described in subparagraph (a);

(c) In or about November 1955, representatives of King and the co-conspirator Eastern held a meeting in New York City, New York, at which they agreed, among other things, that King and Eastern would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement printing services. King and Eastern have continued this arrangement to the date of this complaint; and

(d) In or about November 1955, representatives of the defendants King, NEA and Greater Buffalo held a meeting at the Hotel Beverly in New York City, New York, at which they agreed, among other things, that King and NEA would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement services and keep knowledge of such agreement confined to their respective sales

13 organizations. Pursuant to this arrangement, NEA did the following, among other things, when requested to submit bids to newspapers or their representatives:

(1) In or about March 1957, NEA submitted a bid to the Jackson, Mississippi, State Times at an artificially high and non-competitive price;

(2) In or about January 1956, NEA refused to submit a price quotation to an agent for the General Newspaper group in Atlanta, Georgia; and

(3) In or about January 1956, NEA refused to submit a price quotation to the publisher of the Tupelo, Mississippi, Journal.

Violations of Section 2 of the Sherman Act

24. The defendants Greater Buffalo, Hearst and NEA, the co-conspirator Eastern, and others to the plaintiff unknown, have been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of the filing of this complaint, to monopolize, and the defendant Greater Buffalo, since about June 1955, has monopolized, the above-described trade and commerce in color comic supplements, in violation of Section 2 of the Sherman Act.

25. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants Greater Buffalo and Hearst, others to the plaintiff unknown, and since in or about November 1955, or prior thereto, the defendant NEA and the co-conspirator Eastern, to monopolize, for Greater Buffalo, the printing of color comic supplements and the sale of said printing services through the sales organizations of the defendants Greater

Buffalo, Hearst and NEA, the substantial terms of which
14 have been and are that they agreed to the terms set forth in subparagraphs (a) and (b) of paragraph 22 of this complaint, which subparagraphs are here realleged with the same force and effect as though said subparagraphs were here set forth in full.

26. In effectuation of the offenses alleged in paragraph 24 of this complaint, the defendants Greater Buffalo, Hearst and NEA, among other things, did the following:

(a) Those things which as hereinbefore alleged in paragraph 25, they combined and conspired to do;

(b) Defendant Greater Buffalo increased its share of the market for printing of color comic supplements from approximately forty-two per cent (42%) to approximately eighty per

cent (80%) by the purchase, in or about June 1955, of all the outstanding stock of International;

(c) Defendant Hearst promoted, encouraged and assisted defendant Greater Buffalo in the aforesaid purchase of International;

(d) Defendant Greater Buffalo, in or about 1956, itself or through its subsidiary, Southwest Color Printing Corporation, commenced the erection of a plant at Lufkin, Texas, for the printing of color comic supplements; and

(e) Defendant Greater Buffalo, in or about 1957, itself or through its subsidiary, Dixie Color Printing Corporation, commenced the erection of a plant at Sylacauga, Alabama, for the printing of color comic supplements.

Violation of Section 7 of the Clayton Act

27. The effect of the aforesaid acquisition by the defendant Greater Buffalo of the defendant International, as set forth in subparagraph (b) of paragraph 26 hereof, which subparagraph is here realleged with the same force and effect as though said subparagraph were here set forth in full, has been, and
15 will continue to be a substantial lessening of competition or tendency to create a monopoly with respect to the aforesaid trade and commerce in the United States, in violation of Section 7 of the Clayton Act, in that competition between the defendants Greater Buffalo and International has been and will continue to be eliminated.

Violations of Section 3 of the Clayton Act

28. Beginning in or about 1954, or prior thereto, and continuing to the date of the filing of this complaint, defendants Hearst and NEA severally have sold, and presently sell, comic features to newspapers at discounts, rebates or reduced prices on the condition, agreement or understanding that such newspaper purchasers shall not deal in the color comic printing services offered or sold by any competitor or competitors. The effect of said transactions and of such condition, agreement or understanding has been, and may continue to be, a substantial lessening of competition or tendency to create a monopoly in the sale of color comic supplement printing services in interstate commerce, in violation of Section 3 of the Clayton Act.

29. The violations alleged in paragraphs 21, 24, 27 and 28 of this complaint are continuing and will continue unless the relief hereinafter prayed for is granted.

VII

EFFECTS

30. The aforesaid offenses charged in paragraphs 21, 24, 27 and 28 of this complaint have had, among other things, the following effects:

- (a) Newspapers in many parts of the United States have been denied the advantages of competitive bidding for the printing of their color comic newspaper supplements;
- 16 (b) Newspapers not desiring the color comic supplement printing services offered by the defendants have been compelled to pay arbitrary prices for comic features;
- (c) Price competition among defendants and the coconspirator Eastern for the sale of color comic supplement printing has been eliminated;
- (d) The defendant Greater Buffalo has obtained a monopoly of the printing of color comic supplements in the United States;
- (e) Competition in the printing and sale of color comic supplements has been suppressed and interstate trade and commerce in color comic supplements has been unreasonably restrained; and
- (f) Printers offering color comic supplement printing services to newspapers have been restrained by the acts of these defendants from selling such services to newspaper customers.

PRAYER

WHEREFORE, PLAINTIFF PRAYS:

1. That the Court adjudge and decree that the defendants and the co-conspirator have combined and conspired to restrain and to monopolize, and that the defendant Greater Buffalo has monopolized, the interstate trade and commerce in the printing of color comic supplements and sale of color comic supplement printing services, in violation of Sections 1 and 2 of the Sherman Act.
2. That the acquisition by the defendant Greater Buffalo of the defendant International be adjudged a violation of Section 7 of the Clayton Act.

17 3. That the aforesaid sales and contracts for sale by the defendants Hearst and NEA of comic features on the condition, agreement or understanding that the newspaper purchasers shall not deal in color comic supplement services being offered or sold by any competitor of the defendants be adjudged and decreed to be unlawful and in violation of Section 3 of the Clayton Act.

4. That the defendants, their officers, agents, directors and employees, and all persons acting or claiming to act on their behalf, be perpetually enjoined and restrained from continuing, reviving, or renewing, directly or indirectly, the aforesaid combination and conspiracy and the aforesaid contracts, agreements, or understandings, and from practices having the purpose or effect of continuing, reviving or renewing any of the aforesaid offenses or any offense similar thereto.

5. That the Court adjudge and decree that the defendant Greater Buffalo has caused the erection of plants at Lufkin, Texas, and Sylacauga, Alabama, and used the same in effectuating and maintaining the combination and conspiracy to restrain and to monopolize, and the monopolization of the aforesaid interstate trade; and that the Court enter such orders, as it may deem appropriate and necessary, directing the defendant Greater Buffalo, and its officers, agents, directors and employees, and all persons acting or claiming to act on their behalf, to divest the ownership, control and participation in operating such plants in order to dissipate the effects of the violations herein alleged, and to establish free and unfettered competition in the trade and commerce herein involved.

6. That the defendant Greater Buffalo be required to divest itself of ownership of defendant International and that the defendant International be barred from selling any of its stock or assets to the other defendants or the co-conspirator
18 named herein or to any of their officers, agents, directors or employees, or to any persons acting or claiming to act on their behalf.

7. That the defendants be required to take such other action as the Court may deem necessary and appropriate to dissipate the effects of their unlawful activities as hereinbefore alleged, and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements.

8. That the Court schedule a separate hearing on questions of relief and consider at such hearing specific plans to be proposed by plaintiff, whereunder defendants Greater Buffalo, King and NEA will be required to take such steps as are necessary to sever their relationships with one another, with defendant International, and with defendants Southwest Color Printing Corporation and Dixie Color Printing Corporation.

9. That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem just and proper in the premises.

10. That the plaintiff recover the costs of this suit. Dated: Buffalo, New York, ——, 1961.

William P. Rogers
WILLIAM P. ROGERS
Attorney General.

Raymond M. Carlson
RAYMOND M. CARLSON

Robert A. Bicks
ROBERT A. BICKS
Assistant Attorney General.

Elliott H. Feldman
ELLIOTT H. FELDMAN

Lewis Bernstein
LEWIS BERNSTEIN
Attorney, Department of Justice.

John W. Poole, Jr.
JOHN W. POOLE, JR.

NEIL R. FARMELO
United States Attorney.

Attorneys, Department of Justice.

ANSWER

The defendants, Greater Buffalo Press, Incorporated (hereinafter called Greater Buffalo), The International Color Printing Company (hereinafter called International), Southwest Color Printing Corporation (hereinafter called Southwest) and Dixie Color Printing Corporation (hereinafter called Dixie), for their answer to the complaint herein:

1. Admit the allegations of paragraph designated "1" of the complaint which allege that this action is instituted under the Acts of Congress set forth therein and deny any knowledge or information sufficient to form a belief as to the other allegations contained in said paragraph.
2. Greater Buffalo admits the allegations of paragraph designated "2" of the complaint, and the other defendants deny such allegations.
3. Deny the allegations of paragraph designated "3" of the complaint, except that they admit that Greater Buffalo is a New York corporation with its principal place of business and a printing plant in Buffalo, New York and that its business includes the printing and sale of color comic supplements, and except that they deny knowledge or information sufficient to form a belief as to whether Greater Buffalo is the largest printer of color comic supplements in the United States and admit that Greater Buffalo utilizes the printing facilities of its subsidiaries at Wilkes-Barre, Pennsylvania and Lufkin, Texas, and of Great Lakes Color Printing Corporation at Dunkirk, New York.
4. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs designated "4", "5", "13" and "28" of the complaint.
5. Greater Buffalo and International admit the allegations of paragraph designated "6" of the complaint except that they deny that since 1954 or prior thereto, International, pursuant to written contracts entered into with King, is, and has been obligated to print color comic supplements exclusively for King, and refer to such contracts for the terms and conditions thereof.

6. Greater Buffalo and Southwest admit the allegations of paragraph designated "7" of the complaint, except that they deny knowledge or information sufficient to form a belief as to the purposes for which Southwest was made a defendant herein.

7. Greater Buffalo and Dixie admit the allegations of paragraph designated "8" of the complaint, except that they deny knowledge or information sufficient to form a belief as to the purposes for which Dixie was made a defendant herein.

8. Deny the allegations of paragraphs designated "9" and "11" of the complaint, except that they admit the allegations of said paragraphs which purport to define the meaning of the words and terms set forth in the complaint.

21 9. Admit the allegations of paragraph designated "10" of the complaint to the extent that they allege that Eastern Color Printing Company is named as a co-conspirator therein but deny the existence of any such conspiracy and deny knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph.

10. Admit the allegations of paragraph designated "12" of the complaint but deny that the definition set forth therein is the one commonly accepted in the trade or is all inclusive.

11. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph designated "14" of the complaint, except that Greater Buffalo and International admit that some syndicates ship some matrices to them.

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated "15" of the complaint, except that Greater Buffalo and International admit that they print color comic supplements distributed by some newspapers, that they generally provide newsprint therefor, and that they use printing color plates cast from matrices received from syndicates and newspapers, and except that they deny that the newspapers which maintain facilities for printing and/or print their own color comic supplements are confined to large newspapers in major markets or newspaper chains, and state that almost all newspapers maintain facilities capable of printing color comic supplements.

13. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph "16" of the complaint, except that they admit that they print some color comic supplements

for certain newspapers and for King and N.E.A.; and that they supply the newsprint therefor.

22 14. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph designated "17" of the complaint, except that Greater Buffalo admits that from 1954 to the date of filing the complaint, annual purchases of color comic supplement printing in excess of \$9,000,000 were made from it.

15. Greater Buffalo and International deny the allegations of paragraph designated "18" of the complaint, except that they admit that from 1954 to the date of filing the complaint, King has had contracts with International, and refer to such contracts for the terms and conditions thereof, and Greater Buffalo admits that during the aforementioned period, it has printed some color comic supplements and has furnished newsprint for certain customers of King on the basis of individual orders therefor.

16. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph designated "19" of the complaint, except that Greater Buffalo admits that it prints some color comic supplements for certain customers of N.E.A. and furnishes the newsprint therefor.

17. Admit the allegations of paragraph designated "20" of the complaint insofar as they respectively pertain to them, and deny knowledge or information sufficient to form a belief as to such allegations insofar as they pertain to Hearst, N.E.A. and Eastern.

18. Deny the allegations of paragraphs designated "21", "22", "23", "24", "25", "26", "27", "29" and "30" of the complaint.

23 19. Each answering defendant denies each and every allegation of the complaint not hereinbefore specifically admitted or denied by it, except that Dixie denies knowledge or information sufficient to form a belief as to the allegations of paragraphs designated "6", "7" and "18" of the complaint; Southwest denies knowledge or information sufficient to form a belief as to the allegations of paragraphs designated "6", "8", and "18" of the complaint; and International denies knowledge or information sufficient to form a belief as to the allegations of paragraphs designated "7" and "8" of the complaint.

WHEREFORE, Defendants demand judgment dismissing the complaint upon the merits and awarding to the defendants the costs and disbursements of the action.

RAICHLE, MOORE, BANNING AND WEISS,
By _____

A Member of the Firm

Attorneys for Defendants, Greater Buffalo Press, Incorporated, The Internaitonal Color Printing Company, Southwest Color Printing Corporation, and Dixie Color Printing Corporation, 10 Lafayette Square, Buffalo 3, New York.

the same time, the author has been able to make a number of observations which will be of interest to those who are interested in the study of the life history of the species.

The first observation is that the female *Leucostethus* is very active during the day, especially in the morning and afternoon, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

on the ground or on low bushes, and that she is often seen to be

25 DEPOSITION OF JOSEPH J. GORMAN, TAKEN ON APRIL 18,
1961

JOSEPH J. GORMAN, having been first duly sworn, was examined and testified as follows:

EXAMINATION

By Mr. FELDMAN:

Q. What is your name, please?

A. Joseph J. Gorman.

Q. Where do you reside?

A. 581 Meadowland Avenue, Kingston, Pennsylvania.

Q. What company are you affiliated with?

A. International Color Printing Company.

Q. What is the title of the position you hold with the International Color Printing Company?

A. President and General Manager.

Q. How long have you held those two positions?

A. Approximately 35 or 36 years.

Q. Have you held those two positions continuously?

A. Yes, sir.

Q. Are you familiar as president and as manager with the business operations of the International Color Printing Company?

A. Yes, sir.

Q. Are you as president familiar with the documents
26 and records presently kept by the International Color
Printing Company?

A. As closely as I can keep myself in touch with them. Considering the wide variety of operations and so forth, I have a pretty fair knowledge of the entire operation.

Q. As president do you have knowledge as to the business assets and properties at the present time of the International Color Printing Company?

A. Yes, sir.

Q. As President do you have knowledge as to the machinery and equipment presently in the possession of the International Color Printing Company?

A. Yes, sir.

Q. In regard to such machinery and equipment presently in the possession of the International, was it the policy of International in the past for you as president to participate in the purchase of any or some of that equipment?

A. Yes, sir.

Q. Do you as president have knowledge as to the newspaper accounts or runs presently being printed or serviced by International?

27 A. General knowledge. We have so many papers and they vary from week to week or month to month that I couldn't possible keep in my mind the names of all of the newspapers.

Q. Is there any particular department in International which does have such knowledge?

A. The Schedule Department.

Q. Who has that department?

A. My sister, Bessie Gorman.

Q. How many employees does she have under her direction?

A. About five, five or six.

Q. To your knowledge does International employ personnel who maintain and service machinery and equipment?

A. Yes, sir.

Q. To your knowledge does International employee personnel who recondition or repair such machinery or equipment?

The WITNESS: Will you repeat that please?

Mr. FELDMAN: Will you repeat that?

(Whereupon the question was read by the reporter.)

28 A. Yes, sir.
Q. How many people does International presently have in its employ who maintain, service, recondition or repair such machinery and equipment?

A. Approximately eighteen, seventeen or eighteen.

Q. At the present time does International have printing presses in its possession or control?

A. Yes, sir.

Q. How many such presses does International have?

A. We have three single width presses in Peoria, Illinois. We have five single width presses in Wilkes-Barre, Pennsylvania at 268 George Avenue.

Q. Does that 268 George Avenue have any particular names such as a Parsons or Sheldon Plant?

A. Parsons Plant?

Q. It is called the Parsons Plant?

A. Parsons Plant.

Q. Therefore, the five single width presses that you just referred would be at the Parsons Plant, is that correct?

A. That's right, yes. Now, we have in addition to that at the Sheldon Plant—I prefer to number them. Then it will be easier for me to count them. Then you can count them

up later,—press 2055, press 2042 and 2042-a which might be considered as one machine.

Q. When you say "one machine" you mean 2042?

A. And 2042-a.

Q. Might be considered as one machine?

A. One machine. Press 2531, press 2091 and press 2392 and 2392-a, the "a" being an annex to 2392, and 2392 can be operated as a press without 2392-a. But we generally consider it as one press.

Q. Would that be the same in regard to the numbers 2042-a?

A. Yes, sir.

Q. That also can be operated as a single press. Are there any others that you can think of?

A. That is all?

Q. Would I be correct then in stating that you have six to ten presses?

Mr. MOORE: Subject to correction.

30 Mr. FELDMAN: Yes.

A. I have listed them as best I can recall them now, yes.

Q. We are talking now about the Sheldon?

A. That is the Sheldon plant that I just gave you the name. They are double width presses. I don't know whether I told you that or not. They are double width presses at Sheldon.

Q. Going back to the Parsons Plant, those are all single presses, is that correct?

A. Single presses.

Q. Going back now to June 1, 1955 do you know how many printed presses International then had in its possession altogether?

A. The same number that we have today.

Q. The number you listed a little while back, namely, the presses at the Parsons and Sheldon plants, have they been acquired by International since June 1, 1955?

A. No, sir.

Q. Have any of the presses International presently has at the Parsons or Sheldon Plant been acquired since June 1, 31 1955 from the Peoria Plant of International?

A. No, sir.

Q. In regard to the printing presses which were at the Peoria Plant of International on June 1, 1955, where are those presses presently located?

A. They are still in Peoria in the same position they were in 1955.

Q. Have any of those presses ever been disposed of?

A. No, sir.

Q. Are those presses presently in use at Peoria?

A. No, sir.

Q. In regard to the presses which you just listed as being at either Peoria or Wilkes-Barre did you yourself participate in the negotiations whereby International acquired those presses?

A. I either participated directly myself over a period of thirty-seven years or else I directed the negotiations or approved of them. They were handled by others.

Q. Going back now to the three single width presses, which I believe you stated are at Peoria, based upon your experience can you estimate the value, the present value of such 32 presses?

A. It would impossible for me to estimate the value of any press that we have today for the reason that that type press is not being built. You couldn't replace it, and we never kept a ledger account of the value of each single width press. Each press in Peoria is now twenty years old or over and has been fully depreciated.

Q. To your knowledge are there any records presently available at International which indicates the price paid at any time by International for the three single width presses presently at Peoria?

A. I would say that there are no records showing the value of each press for the reason that with one exception they were used presses. We got equipment from Cutler-Hammer. We got equipment from Hess and Barker. We got equipment from the Goss Company in Chicago and we combined all of these together in order to produce a complete press. But at no time did we keep a record of what any single individual press cost. Now, the only press we have today which was not put together in parts or by components from various companies was 33 one press in Peoria which we purchased directly from the Goss Company, which according to my memory cost approximately \$50,000 when we purchased it. That is the only new press we have or ever have had.

Q. When you state that International paid \$50,000 for that particular single width press, do you know when that press was purchased, the year?

A. Somewhere between '37, '38 or '40. I can't tell you exactly, somewhere about twenty years ago.

Q. Now, at sometime prior to or even after 1955 in regard to the single presses now at Peoria, to your knowledge was any value placed upon such presses for insurance purposes?

A. Yes, sir.

Q. Were they?

A. Replacement value by an insurance appraiser.

Q. Did this insurance appraiser, before placing a value upon such presses consult with you or anyone else at International?

A. He consulted with me, but I believe his appraisal was based on what I told him so much as what he was able to determine by his own efforts outside. Now, did he place
34 a value on the three single width presses?

A. He put a replacement value on each press.

Q. Do you know what the replacement value is?

A. No, sir.

Q. Are there any records?

A. We have his appraisal.

Q. Where would those records be, sir?

A. The appraisal is in Wilkes-Barre?

Q. Are they readily available to you?

A. Yes, sir.

Q. Going now to the single width presses which are located at the Parsons Plant, do you know how much International paid for any one of those presses?

A. No, I do not know for the same reason that I didn't know the value of the presses in Peoria because they were bought from—sections were bought from various people. Tensions, for instance, would have been from the Hoe Company, motor equipment from Cutler-Hammer, something else from others,
35 and then when combined they all added to our machinery account, but did not give us an individual value on each press.

Q. Is there any press presently now at the Parsons Plant which was purchased new much like the press you spoke about a little while back at Peoria which cost \$50,000?

A. No, sir.

Q. In regard now to the presses at the Parsons Plant, was an insurance appraisal ever placed upon such presses?

A. Yes, sir.

Q. Do you know the appraised value put by the insurance company upon such presses?

A. No, sir.

Q. Do you have such records available?

A. Yes, sir.

Q. And are they also easily accessible to you, sir?

A. Yes, sir.

Q. Now, in regard to the insurance appraisal, does the insurance appraisal break down each press or is it a lump sum?

A. It breaks down each press.

Q. Does it go further than that and break down the parts which are used incidentally to the press?

36 A. No. He takes the press and figures the replacement value as a whole.

Q. In regard to supplemental parts such as folders, would they be included in the valuation of the press?

A. When he figures the appraisal, he figured what it would cost to reproduce the whole press including folders. Now, if I might explain further how difficult it is to keep a value on this, it might make it clearer in your own mind. We have one press, Number 1999 which is thirty-seven years old. We bought the lower two decks of that from a small newspaper in Pittston, Pittston Press. We bought the two top decks from Allentown, Pennsylvania. We patched the two together and we picked up the motor from somewhere else. That was thirty-seven years ago and that press is still in operation so that, frankly, I think I can make clear how it is impossible for us to figure what it really cost us to put it there. But, the appraiser did figure what he thought it could be replaced for.

Q. In regard now to the value, is it your testimony
37 that most of the presses, or in fact all of the presses outside the one you just mentioned in the possession of International were purchased in the 1920's?

The WITNESS: Will you repeat that please?

Mr. FELDMAN: Will you repeat the question?

(Whereupon the question was read by the reporter.)

A. No, sir.

Q. When were they purchased, sir?

A. Over the years from 1924 until, I think the last one was possibly eight or nine years ago. I can't say just when we put each press up, but it was spread over the years. As we grew

and needed presses, we installed them but I have no date as to when each one was installed.

Q. Is it your further testimony that no appraisal can be put upon the presses because they represent to a large extent the ingenuity and resourcefulness of people at International of making the press meet specific requirements?

38 A. I don't know how the appraiser works. I don't know just how he went about getting the figure, but it seems to me in view of what you just said it would be extremely difficult.

Q. I am talking about in the point of view of your appraisal?

A. Yes, I would say it is very difficult to put a value on it.

Q. Would that stem because of the uniqueness of the machinery as far as International is concerned?

A. Each press was rebuilt to suit our particular convenience and for us to be able to try to do the work more rapidly. The manufacturers really never built this type of press particularly for color printing. The adjustments and the changes had to be made by the color printers.

Q. Now, what you just stated in regard to the Parsons Plant, would that also be applicable to the Sheldon Plant in regard to the value of the presses there?

A. That is right.

Q. And in that case also was an insurance appraisal placed upon each individual press there?

39 A. With the possible exception of one, 2392 and 2392-a. We might have installed since the appraisal was made.

I am not certain.

Q. Do you recall when that press was purchased by International?

A. I am hazy about it. Eight or ten years ago. I am not sure.

Q. Is it presently functioning at International's plant?

A. Yes, sir.

Q. Since June 1, 1955 has International ever acquired any additional printing press other than the ones you just mentioned?

A. Several.

Q. Can you enumerate those please?

A. One press which we purchased out of Baltimore from the Baltimore Post was purchased at the instigation of the Greater Buffalo Press for their use in Sylacauga. That number was press 2022. Now, there were several other presses purchased

from the Journal American in New York, some complete—that is, some without folders, some without motors, one more or less as junk, and I have never had knowledge of the numbers of those presses. That is, the serial number. Offhand, I can't tell you exactly what we paid or what they cost us.

Q. You say how many were purchased from the Journal American?

A. I think two. I am not sure. I think two. I didn't handle—

Q. Negotiations?

A. Negotiations.

Q. Where are those presses that were purchased?

A. They are in a warehouse, in one of our warehouses, dismantled.

Q. Do you recall how much International paid for those two presses?

A. I am sorry. If I attempted to do that, I wouldn't be able to give you an accurate answer. We paid junk price for one. We might have paid \$32,000 for another and it cost us something like \$70,000 or \$80,000 to get them out of New York and take them to Wilkes-Barre.

Q. Thereafter were they worked upon?

A. They have never worked. They are still lying, waiting some day to be used or to be used for parts.

Q. Was it the intention of International when purchasing those presses to use them or to merely use them to supplement parts of other machines?

A. Partly for parts, but partly to use them because some day we must move out of the Parsons Plant because of settling conditions underneath and we will have to have additional equipment running at the Sheldon Plant before we can move out of the Parsons Plant.

Q. In regard to press 2022 do you recall how much was paid for that press?

A. I think the purchase price was about \$32,000 or \$33,000.

Mr. MOORE: Pardon me. I am not sure if 2022 has been identified yet.

Mr. FELDMAN: Yes. This is off the record.

(Discussion off the record.)

Q. This press 2022, where was that press purchased from?

A. Baltimore Post.

Q. For the purpose of refreshing your memory, Mr. Gorman, I show you plaintiff's Exhibit 15, which is annexed to the affidavit of Raymond M. Carlson, in the moving papers herein of the Order to show cause and ask you whether this refreshes your memory as to the exact amount paid by International for press 2022?

A. \$32,500.00.

Q. Well, is your memory refreshed now?

A. That is right.

Q. Now, based upon your present memory, how much did International pay for press 2022?

A. \$32,500.00.

Q. And did that price include the transportation cost from Baltimore to Wilkes-Barre?

A. No, sir.

Q. Do you know how much that transportation cost was?

A. No, I do not.

Q. Have you any idea, even approximately, what it was?

A. No, sir.

43 Q. At the present time, does International have in its possession or control, press 2022, which it purchased at Baltimore?

A. No, sir.

Q. Where is that press at the present time?

A. In Sylacauga, Alabama.

Q. Was that press shipped from Wilkes-Barre to Sylacauga?

A. Yes, sir.

Q. You know the date when that press was shipped from Wilkes-Barre to Sylacauga?

A. No, sir.

Q. Was it in the last two years?

A. Within the last two years.

Q. Now, at the time press 2022 left International Plant at Wilkes-Barre, do you know what the value was of that press?

A. No, I couldn't say that.

Q. Do you know whether the value was less or more than the value or the purchase price originally paid by International?

A. I would say it was more.

44 Q. What, if anything, happened in the interval of time when International acquired press 2022 and shipped it out to Sylacauga to enhance the value?

A. This would be a bit of a long answer, but I must do it in order to make it clear.

Q. That is all right, go right head.

A. Press 2022 was purchased, it was what was known as a 6-deck high press, consisting of 6 decks high and 12 printing couples. It was not equipped for printing five plates wide. It was equipped for four plates wide only. As a 6-deck press, the Baltimore Post ran that at a speed of approximately 20,000 per hour, 4-page sections on each side. The reason for what we might call a low speed, was because it was so high and so awkward and it was so difficult to handle. After we purchased that price at the instigation of Greater Buffalo, we were told by Greater Buffalo that that was a mistake to set up a 6-deck press, that the same cylinders and printing couples should be used, but they should be 4 decks high, and three tiers and three stacks of legs, rather than high, because that would make it less unwieldy and more easy to operate and to get speed out of.

Also, at the instigation of Greater Buffalo Press, the
45 cylinders were changed so that instead of 4-plate wide,
it was a 5-plate wide machine on 8 of the printing couples and 4-plates wide on 4 of the printing couples, thus adding greatly to the flexibility of the press, it becoming possible when we are using a 5-plate wide press, to do approximately the same kind of work that you would have to use 16 cylinders for otherwise. Then there was a clip arrangement installed which held the plates on the press better and this new clip arrangement was prepared, was sent to us, the clips and ring and so forth were sent to us by Buerk Machinery Company of Buffalo, the purpose of that being to be able to use third plates or one-sixth plates, rather than just half pages, or rather than three-third pages together, as a whole. In other words, the press was vastly improved from a flexibility standpoint against what it was when it was operated in Baltimore.

Q. Going now back to the time when International Press acquired or purchased that press, at that time, was that considered a so-called double width press?

46 A. That is a double width press.

Q. How many cylinders did press 2022 have at that time?

A. Twelve printing couples. That means twelve cylinders, number twelve impression cylinders.

Q. Were there any other presses in the possession or control of International at that time, which had twelve cylinders?

A. I told you before about the combination press, press 2042 and 2042-a when operated together, had twelve cylinders, but it was not set up as one press really; it was set up as two presses, one in front of the other. Press 2392 and 2392-a also had twelve cylinders, but four of the cylinders were set apart from the eight cylinders and we do not now consider that that was as good an arrangement as was later put into effect when 2022 was erected.

Q. At any rate then, when International acquired press 2022, it was the only single press in the plant at International, which had twelve cylinders aside from the combined presses you just spoke about, is that correct?

A. That is correct.

Q. Based upon your experience, is there greater facility in getting out production when you have more cylinders?

A. The more cylinders you have, the more pages you can print on the one press. Now, if we want to print a 14-page section, we have got to use 2 eight-cylinder presses with the same number of men on each press, but when you have a 5-plate wide, 12-cylinder double width press by itself you print fourteen pages or sixteen pages without increasing the crew by only one or two men.

Q. At the time International acquired press 2022, were there any presses at International's plant which contained cylinders capable of holding more than four plates?

A. No, sir. As a matter of fact, I never saw in my thirty-five years, any other press with the exception of one that was used at Greater Buffalo that is capable of printing more than four plates across.

Q. And that would still be applicable at the present time as far as International is concerned?

A. As far as I know there are no other presses in the country that are built to carry five plates wide across.

Q. Is it your testimony then that International after acquiring press 2022, enlarged the cylinders so that five plates were able to be inserted on the cylinder instead of the normal four plates, is that correct?

A. We did not enlarge the cylinders. The cylinders remain the same size, but the clips and rings were so arranged so that the same plates could go on the same arrangement, but it was impossible to enlarge the cylinders. That can't be done.

Q. As far as the frame, the frame remained the same?

A. That is right. In other words, within the same frame you could have cylinders that would carry one more plate on each cylinder.

Q. This operation of making it possible for the cylinder to hold an additional plate, how long an operation would that take as far as manpower at International?

A. I have no specific time for each operation that was done. The job of erecting that press and lining it up and so forth, was done over a period of three years when the maintenance crew had nothing else to do, they would work on that and it took us three years to complete the job as far as we 49 went.

Q. Prior to press 2022 coming to Wilkes-Barre, was the space where the press was placed, occupied by another machine?

A. No, sir.

Q. What equipment, if any, was in the location which the press thereafter occupied?

A. As I recall, it was junk pretty much. It was a separate building. It was not in the same building.

Q. What building was the press worked on?

A. In our adjoining building to the main plant.

Q. That would be what, the Sheldon Plant?

A. Yes.

Q. Was there a pit made or any great innovation made in the plant in order to facilitate working on press 2022?

A. In Wilkes-Barre?

Q. Yes.

A. There was no pit made.

Q. Mr. Gorman, I believe I asked you a little while back if you know the value of press 2022 when it left International's plant at Wilkes-Barre, and I believe you testified that you don't recall?

50 A. I wouldn't attempt to pick that figure out of the air.

Q. For the purpose of refreshing your memory, I show you a balance sheet of International Color Printing Company, dated

December, 1959, and direct your attention to the balance sheet contained therein as of January 2nd, 1960, and refer down to the page, to "Other Assets," and the sub-heading "Press 2022," and ask you to look at that page?

A. Yes, sir.

Q. Does that refresh your memory as to the value placed upon Press 2022 when it left International's plant?

A. At that time, the press did not leave Wilkes-Barre at that time. The press did not leave until, I think, approximately a year later than that. The total value of the press as of a certain date, is contained in the reports which you asked me for, but I can't remember exactly what it was; somewhere in the neighborhood of \$110,000.00, \$120,000.00, \$130,000.00. I can't remember exactly.

Q. Approximately what was the value placed when it left there, about the time it left International?

A. Let's say \$125,000.00, \$130,000.00.

51 Q. During the time that the press was at International's plant at Wilkes-Barre, namely, press 2022, was any insurance appraisal made of that press, to your knowledge?

A. No, sir. We have not had an insurance appraisal in ten years.

Q. Was that press insured at all while it was being worked?

A. I believe the Accounting Department insured the press for whatever amount they happened to have as of a certain date, and changed that from time to time over every quarter or every three or four months.

Q. Is it your testimony then now, Mr. Gorman, that the value of the press more than doubled because of the work put on it to make it such a unique type of press so far as printing of color comics is concerned?

A. Well, parts and so on, that went on there, yes, sir.

Q. Now, during the time that press 2022 was worked upon by personnel of International, did International purchase the extra parts or required parts?

A. We purchased parts for which we were later reimbursed by Greater Buffalo.

52 Q. And was International reimbursed for the purchase price of press 2022?

A. Yes, sir.

Q. When were they so reimbursed, do you recall, sir?

A. About four months ago, three or four months ago.

Q. At any time prior to three or four months ago, was International ever reimbursed for either purchase price or the labor or parts put into the machine?

A. I don't recall that, no.

Q. Outside of press 2022, were there any other presses shipped out of International to Sylacauga or any other subsidiary of Greater Buffalo?

A. No, sir.

Q. Were any presses since June 1, 1955, shipped out of Wilkes-Barre to Greater Buffalo's plant at Buffalo or Dunkirk, to your knowledge?

A. No, sir.

Q. Do you have available with you, any breakdown or general description as to the stereo-type machinery now in the possession of International?

A. Yes, sir.

Q. Can you give us such a breakdown?

53 A. This information was obtained by making a physical inventory of the equipment since this order was received. You want me to read them off?

Q. Yes.

A. 16 tank plate nickelizing system with rectified filter, et cetera.

Q. Do you recall when International purchased that equipment?

A. About six years ago.

Q. Do you know how much was paid for that equipment?

A. No, I don't, because that, as in the case of the other things, is a combination of what was purchased from various sources and we have never kept an individual account on each machine.

Q. Before going down this whole list, I will ask you this general question: Has an insurance appraisal been made upon this equipment you are reading off now?

A. Some of this equipment was moved from our Parsons Plant to the Sheldon Plant and was included in the appraisal which was made ten years ago.

Q. And is that the present appraisal that you are operating under for insurance purposes?

A. Yes. We have had no appraisal since ten years.

54 Q. What has happened in regard to equipment which came or was purchased by International since ten years ago?

A. Well, in case anything should happen, we would have to go back over our books and try to see what we have added to our machinery total. We haven't had an appraisal made since.

Q. Now, do you have with you the appraisal figures in regard to the equipment that you are now reading off?

A. No, sir. It is a very, very large book and I wasn't asked to take it, so I didn't take it with me.

Q. I am not interested in why or anything like that. Would that be available to you whenever you wanted it?

A. Yes.

Q. Is it easily accessible?

A. Yes.

Q. Will you go down and indicate the equipment?

A. One Della metal saw; one standard conveyor system to move plates; one plate milling machine; one El rod machine-old; in other words, it is hardly used; one plate shaver; 55 one 1500 amp spare rectified; one 10,000 pound capacity Goss electric metal plug; two electric mat ovens; two hoe casting boxes; two hoe tail cutters and shavers; two hoe precision plate shavers; one plate splitter; one double ring cutter; one single ring cutter; two sta-hi mat formers; eight hoe single plate rodders; assorted plate cans, plate racks and shelving; six mat ovens; two Niagara Power shears; one 4-way mat cutter; two floor fans; one high frequency mat drier; marking tables. That is what we have in the stereo-type equipment as a result of physical inventory made last week.

Q. Going back and just reviewing that list briefly, what has been done—withdraw that—. Going back and looking over that list, what purchases in regard to stereo-type equipment have been made since June 1st, 1955?

A. This is not going to be accurate—

Q. No, just based upon your present knowledge.

A. Two marking tables, one high frequency mat drier, one four-mat cutter, two Niagara Power shears, six mat ovens, nickeling system, conveyer system, two electric mat 56 ovens, one plate splitter, one double ring cutter and one single ring cutter.

Q. Do you know the purchase price of any of that equipment at all?

A. No, I don't.

Q. Can you place any value upon that equipment?

A. I am sorry, I couldn't. For the past five years I had very little to do with the actual purchase of machinery and I don't know exactly what it cost.

Q. Now, are there records available which show what the purchase price was for that equipment?

A. On that particular list of machinery, I think so.

Q. And who would have such records?

A. Our Accounting Department.

Q. And is that readily accessible to you?

A. Yes, it is.

Q. Since June 1st, 1955, has International ever shipped out of its plant, any stereo-type equipment?

A. I don't recall.

Q. Has it ever shipped any such equipment to Greater Buffalo at Buffalo or at Dunkirk?

A. Out of the Peoria Plant.

Q. You did?

57 A. Yes.

Q. And what equipment was shipped from Peoria?

A. One combination joiner and plate saw with saddle; one Goss saw and trimmer, with edge trimmer; one casting box, complete with vacuum pump; one spare sout for casting box; one sta-hi mat former; one hoe precision shaver with spare motor; one hoe tail cutter and trimmer; one two-wheel grinder; two plate rodders; one box miscellaneous cutters and knives; one 50 horsepower spare motor; one rectifier; one motor generator; one metal cabinet; three electric panel boards for stereo; one electric drill; five large fans; eleven vent fans; six CO₂ tanks; three medium CO₂ tanks; six small hand extinguishers; three hose reels. That is all.

Q. At the time or interval of time—

A. I beg your pardon, one Royal typewriter.

Q. When was this equipment shipped, do you recall the year?

A. About 1958 or 1959.

Q. Was any stereo equipment shipped at or about that time from Peoria to Wilkes-Barre?

A. Not that I recall, no, sir.

58 Q. Is there presently any stereo-typed equipment at Peoria at all?

A. I don't believe so.

Q. Is it your—

A. There might possibly—wait just a minute—there might possibly be a very old nickel tank there.

Q. Is it your testimony then that the bulk of the stereo-type equipment at Peoria was shipped to Greater Buffalo?

A. Yes, sir.

Q. At any time has International shipped any stereo-type equipment to Dixie Color Printing Company Corporation at Sylacauga?

A. We sent a double ring cutter in January of this year. I don't have any recollection of anything else.

Q. Do you recall any plate cutting saw being sent to Sylacauga?

A. I don't know that that is stereo-type equipment.

Q. Oh, I see. But was such a plate cutting saw sent?

A. The description I have here is metal saw. I don't know what it was, whether it was for cutting plates or what. It was a metal saw.

59 Q. Outside of these shipments that you spoke about, the one to Sylacauga and the others to Greater Buffalo, were there any other type of stereo-typed equipment shipped out of any of the plants of International from June 1st, 1955?

A. Not that I can recall.

Q. I believe, Mr. Gorman, you have described printing press equipment and stereo-typed equipment. What other classifications are there of equipment in the possession or control of International?

A. Well, there are lift trucks for handling the shipping and handling pallets and skids and then there are pallets and skids, probably air-compressors and odd items like that, and the main bulk of our machinery, of our equipment, is a press room and stereo-type equipment.

Q. Now, the other types of equipment other than what you have just mentioned, do you have any idea what their present value is?

A. No, sir.

Q. For insurance purposes, has any value ever been placed upon such equipment?

60 A. The only thing they do is keep a record of what goes into the machinery account and increase the insurance from time to time.

Q. So the value of such equipment would be reflected in the insurance appraisal?

A. Well, it is minor, this equipment is minor. The pallets and skids, for instance, might last only three months and they have got to be replaced and so forth. They are made out of wood, and the lift trucks are now probably depreciated because I don't think we have any under seven or eight years old.

Q. At any rate, for insurance purposes, there would be a value placed upon all equipment you spoke about, and then there would be a general lump sum value placed on other equipment?

A. They make a lump sum addition from time to time to the insurance value.

Q. Then would the value placed upon all your equipment and press at your Wilkes-Barre plants be reflected in your insurance policies or schedules attached thereto?

Mr. MOORE: I am going to object to the form of the question on the grounds that it calls for a conclusion. I will let the witness answer it, but as anybody knows, replacement values and market values are two different things.

Mr. FELDMAN: Let the witness answer the question.

The WITNESS: May I have the question again, please?
(Last question read.)

The WITNESS: The replacement value is identified in the insurance policies, is considerably higher than the book value of the machinery on the books.

By Mr. FELDMAN:

Q. At any rate, some value has been placed by one insurance company or more insurance companies upon such equipment, whether true or inaccurate, as to the actual value?

A. Yes, sir, as to the replacement value, as to the insurance value, yes, sir.

Q. That is right. In other words, some insurance value has been placed?

A. Yes.

Q. And that would apply generally to all the equipment you spoke about, some may be specified and others would be lumped together, is that correct?

A. Yes.

Q. And is that insurance value as to all of the equipment, is that easily accessible and available to you, sir?

A. Yes, sir.

Q. Now, as to machine shop equipment, has any such equipment been shipped to Sylacauga?

A. Yes, sir.

Q. And will you enumerate, please, such equipment that was sent?

A. Two medium size lathes, with approximately nine foot beds; one small lathe with three and a half foot bed; one milling machine; two drill presses; one pipe threading machine; one emery wheel or bench grinder; one tool grinder.

Q. Any other equipment, sir?

A. Not that I can recall or have any record of.

Q. Was International reimbursed by Dixie Color Printing Corporation or by Greater Buffalo for such equipment you have just mentioned?

A. No, sir, because we expect to get that equipment back or be reimbursed for it. We haven't decided on what it might be worth, but we expect to get it back.
63

Q. In regard to reels which may be used on press 2022, to your knowledge, did International send any reels to Sylacauga?

A. Yes, sir.

Q. How many reels were sent?

A. Two, I believe.

Q. In regard to folders, were any folders sent to Sylacauga?

A. As part of the press.

Q. How many were sent, sir?

A. Two.

Q. Were they folders worked upon at International's plant in Wilkes-Barre prior to being sent down?

A. Yes.

Q. And is the same thing applicable to the automatic reels you just spoke about?

A. Yes, sir.

Q. To your knowledge was any insurance value placed upon the automatic reels or the folders sent?

A. Not as separate—

64 Q. In other words, they were considered—

A.—As part of the press.

Q. As part of the press?

A. Yes.

Q. Now, in addition to that equipment, were any folders ever sent to the Greater Buffalo plant here in Buffalo or Dunkirk?

A. I recall one.

Q. And what was that, sir?

A. That was a single width folder, which was sent up to them. They paid us for it and then they didn't want it and they sent it back.

Q. What about automatic reels?

A. There were some sent up there.

Q. How many?

A. I don't know.

Q. Would four be correct?

A. It might be four. I don't know.

Q. What about the folders, would that be one or two?

A. The only one I recall is the one.

Q. Is it possible it might be two?

A. It could be two.

Q. In regard to the equipment sent to Greater Buffalo
65 plants at either Buffalo or Dunkirk, has International
been reimbursed?

A. Yes, sir.

Q. And when did such reimbursement take place?

A. January of 1961.

Q. Do you recall when in January?

A. Let me say that—let's put it another way—we were paid currently by Greater Buffalo for work which was done in connection with the building in Sylacauga through the years 1957, 1958 and 1959, a total amount of about \$47,000.00 and then during the year 1960 we were paid \$48,000.00. In 1961 we were paid \$130,000.00. All told, we were paid by Greater Buffalo or Dixie, but I think almost entirely by Greater Buffalo, approximately \$243,000.00.

Q. Now, when you say \$243,000.00, did these payments take the form of a check or cash being paid to International—

A. Checks.

Q. Or at any time, did it take the form of a set-off as to money you owed them and then there was a balance?

A. It was a check.

66 Q. These were all checks?

A. These were all checks.

Q. They were all deposited in the account of International, is that correct?

A. Yes.

Q. Is there presently any money due International for equipment shipped either to Sylacauga or to Greater Buffalo?

A. I would say in the neighborhood of \$26,000.00.

Q. Is it your testimony then that International either has received payment or will receive payment or in lieu thereof, the return of any equipment which has been sent to Slyacauga?

A. Yes, sir.

Q. And is that true in relation to equipment sent to Greater Buffalo at either Buffalo or Dunkirk?

A. Buffalo paid us for anything that we sent up there, with the exception of a partial payment on, I think, oh, about \$20,000.00 on reels which the Accounting Department overlooked as something they didn't bill them for, which I presume will be paid for.

Q. Has International been paid for the stereo-type equipment which was sent from the Peoria plant to Greater
67 Buffalo?

A. We did not bill them for that because we considered we had no further use for it. It was depreciated and pretty much out of date.

Q. Prior to shipping it to Greater Buffalo, was any attempt made to sell it on the open market?

A. No, sir.

Mr. FELDMAN: We will take a recess at this time.

(Short recess taken.)

68 By Mr. FELDMAN:

Q. Going now, Mr. Gorman, to another subject, namely newspaper runs or accounts, going back to June 1955, do you recall or have any records which indicate the runs then being serviced by the Peoria Plant of International?

A. No, I don't know exactly what runs were serviced by Peoria at that time. I don't know—I don't have that record at that time.

Q. For the purpose of refreshing your memory I will read off a list of runs and will you tell me, one, whether you recall such a run being serviced by the Peoria Plant of International?

A. If I were to do that, Mr. Feldman, I would be guessing because sometimes we did print runs from out in that area in Wilkes-Barre because, although the transportation rate was higher, we saved in plate saving because we had the same plates on the press. Therefore, I don't know. I know all the runs we were printing as of June 1, 1955, but I don't know which ones exactly were in Peoria.

Q. Do you recall any runs which were being printed
69 there? Have you got the list there?

A. Yes. I have a list right here. I will be glad to show
you this list.

Q. I will guess at it. Suppose you tell me the runs you are
sure of.

A. I am guessing. I don't know whether we had been in
Peoria.

Q. Go through and tell me which ones you presently recall
being printed?

A. Madison, Peoria Journal, Tulsa-Wichita Beacon, Houston. We printed in both places from time to time, depending on what kind of a run it was. We sometimes printed it in Wilkes-Barre, Rockford, Wichita. I am uncertain about San Angelo or Abilene, Corpus Christi, Tyler. I am uncertain about Wichita Falls, Springfield Register, Springfield News Sun, Ohio News Sun—

Q. Excuse me. You are uncertain or they were printed?

A. No, I think they were printed. Anderson, Indiana; Gary,
Indiana; Sioux Falls, South Dakota; Davenport, Iowa; St.

70 Joseph; Albuquerque; Shreveport. I don't recall the
other three and I am not one hundred percent certain
about the others. I think they were printed in Peoria.

Q. Are there any runs on this piece of paper which you have
before you which you are not certain about being printed out
of Peoria or Wilkes-Barre in June 1955?

Mr. MOORE: Pardon me. Would you have that marked?

Mr. FELDMAN: Yes. I will ask that this piece of paper marked
"Peoria runs" be marked as Plaintiffs Exhibit 1 for identifica-
tion.

Mr. WEISS. Why don't you take the numbers up from where
you left off?

Mr. FELDMAN: No. I won't accept that. I think it is best that
the deposition speak for itself.

(Whereupon the paper marked "Peoria Runs" was marked
Plaintiff Exhibit 1 for identification.)

71 Mr. FELDMAN: For the record let the record indicate
that Plaintiff's Exhibit Number 1 for identification has
a title "Peoria Runs" and lists under it certain newspaper ac-
counts.

Q. Referring now to Plaintiff's Exhibit Number 1 for identi-
fication, are there any runs listed on the page there which to

your knowledge were not printed in June 1955 at either Peoria or the Wilkes-Barre plant of International?

A. I have to guess. I don't know.

Q. You don't know?

A. No.

Q. Do you have in your possession any list which indicates the runs being serviced or printed in whole or in part in June 1955 by any of the plants of International?

A. Not as of June 1, 1955. I think the way the question was asked that is the information you asked.

Q. Well, just referring to the specific question, you say "No" sir, is that right?

72 A. No, sir.

Q. What is the nearest date that you have such a list?

A. The only date I have, the only information of which I am not one hundred percent certain is every run that we serviced at some time or other since June 1, 1955.

Q. Do you have such a list in your possession?

A. Yes, sir.

Q. Does your list indicate to you when International ceased servicing a particular run if International is not printing for that account now?

A. I have two lists, one list which shows the name of every run which we serviced at any time since June 1, 1955, and the other list shows papers which we have printed some time since June 1, 1959 which are now being printed by other plants.

Q. All right. Going now to the list, can you tell us the runs which International serviced at any time from June 1, 1955 and after commencing to service that run ceased printing for the account?

A. Yes, sir.

73 Q. Now, will you give us such a list?

A. Tallahassee, Florida Capital.

Q. Excuse me. You are presently servicing this?

A. No, this is the list of runs which we have serviced but are not servicing now. Is that what you want?

Q. That is all right. Who presently is servicing that, do you know?

A. I don't know.

Q. Do you recall when International ceased servicing that account?

A. The last release was June 5, 1955.

Q. All right, sir. The next one?

A. Lebanon, Pennsylvania Daily News.

Q. When did International cease servicing that account?

A. June 12, 1955.

Q. Do you know who presently services that account?

A. I don't know, no.

Q. Next one?

A. Norfolk, Virginia, Ledger Dispatch. Do you want me to go on? Last release—

Q. Yes.

74 A. July 31, 1955. I think it is now a part of a combination of newspapers in Virginia known as the Norfolk, Virginia Pilot and I don't believe that they have a supplement as of today.

Q. Now, in regard to the runs you previously testified to, I believe I asked you whether or not you know who presently services those runs which International lost or gave up. Now, as to those runs, can you tell us who immediately commenced servicing those runs when International ceased printing for that account?

A. I have no way of knowing, generally speaking, where a run goes when it leaves us unless I get it by gossip or report on it from the field. I don't know.

Q. As to those runs did you receive any information as to where the run went?

A. No, sir.

Q. You did not. Now, you may continue.

A. And Andalusia, Alabama, Covington Dispatch, Last release August 14, 1955. I don't know where it is now being printed. Is that what you want me to do?

75 Q. I want to know immediately after International ceased printing the run who commenced if you know?

A. I don't know.

Q. You do not know.

A. No.

Q. All right, sir.

A. New Orleans, Louisiana Item, last release 9/11/55. The newspaper to the best of my knowledge is now out of business and went out of business, I think, at that time. Ready?

Q. Yes, go ahead.

A. Mt. Pleasant, Texas, Times, last release November 13, 1955. I don't know who is printing it and I don't know who started to print it after we gave it up. Havana, Cuba Post, 12/25/55. The newspaper is out of business. Corpus Christi, Texas, Caller, December 25, 1955. I don't have any record of who is now doing it. Oh, Marshall, Texas, News Messenger, December 25, 1955. I gave you Corpus Christi. Paris, Texas News, December 25, 1955; San Angelo, Texas Standard—

Q. Excuse me. Do you know who presently prints for
76 Paris?

A. No.

Q. Do you know who commenced printing when you gave it up?

A. I should know that, but I don't. I can't recall it.

Q. Go ahead.

A. San Angelo, Texas; Abilene, Texas, Reporter, 12/25/55; Big Spring, Texas, Herald, 12/25/55. If I know who did it, I will—

Q. All right, sir.

A. Dennison, Texas, Herald, 12/25/55; Snyder, Texas, News, 12/25/55; Greenville, Texas, Banner, 12/25/55. Now, from the fact that we ceased printing all the same date, it appears that this might have been a group of newspapers, but I am not certain.

Q. All right, sir.

A. New Kensington, Pennsylvania, Dispatch, January 22, 1956. I do not know who was printing and I never did know. Artesia, New Mexico, Advocate, 5/27/56 last release. I do not know who is now printing. Lakeland, Florida, Ledger, 6/10/56

77 last released. I believe it is now being printed by Southern Color Printing Company at Newport News and I think it went there immediately after we lost it.

Topelo, Mississippi, Journal, last release July 1, 1956. To the best of my knowledge it is being printed by Southern Color Printing Company at Newport News. Wichita Falls, Texas Daily, July 1, 1956. I don't have a record of where it went or where it is now. Gulf Port, Mississippi, Gulf Coast News, July 8, 1956. I don't have a record of where it went or where it is now.

Lovington, New Mexico, Press, July 15, 1956. I don't have a record of where it went or where it is now. Shreveport, Louisi-

ana, Times, 9/2/56 last release. I think it is now being printed in Lufkin by Southwest.

Q. Southwest?

A. Orangeburg, South Carolina, Times Democrat, last release 9/16/56. I believe it is now being printed and has been printed since that date by Southern Color Printing Company at Newport News, Statesville, North Carolina News, 10/28/56
78 last release. I don't know where it is being printed.

Springfield, Illinois Citizen Tribune, 12/2/56. I don't know where it is being printed. Monroe, Louisiana, News Star World 12/30/56 I believe it is now being printed in Lufkin, although I am not absolutely certain. Middletown, New York, Daily Record, January 6, 1957. I don't know where it is being printed and I don't know where it went after we lost it.

Pittsburgh, Pennsylvania, Sun Telegraph, March 10, 1957. We were printing one small section of the Pittsburgh Comic supplement and the major portion was being printed on the Hearst presses in Chicago. After this section was taken out of our plant, it was moved to the Hearst Presses in Chicago.

Winston-Salem, North Carolina, Journal and Sentinel, March 31, 1957 last release. To the best of my knowledge it is now being printed by Southern Color Printing Company at Newport News.

Portsmouth, Virginia, Times, last release March 17, 1957.

To the best of my knowledge it is now being printed
79 by Southern Color Printing Co. at Newport News. Philadelphia, Pennsylvania Mayfair Times, last release April 21, 1957. I have no knowledge as to where it is being printed. Rochester, New York, Citizen, April 21, 1957. I have no knowledge as to where it is being printed.

Raleigh, North Carolina, Times, June 16, 1957. It is now being printed by the Star Color Printing Company at Wilmington, Delaware.

Jackson, Mississippi, Clarion Ledger, July 7, 1957. I don't know where it is being printed. Lake Charles, Louisiana, American Press, August 11, 1957. I don't know where it is being printed.

Decatur, Alabama, Daily, 9/29/57 last release. I don't know where it is being printed. Knoxville, Tennessee Journal, 10/9/57 last release. Merged with another newspaper in Knoxville and after that we ceased printing for it and they discontinued their

supplement. Peoria, Illinois, Journal. Now, I think I should explain that at no time did we have contracts for these newspapers. These newspapers were contracted for by King

80 Features Syndicate and they passed the work onto us.

When I say that the work was transferred to another plant, it isn't that we lost the contract. King Features may have lost it or they may have transferred the work directly themselves or consented to the transfer.

Peoria, Illinois, Journal, 12/15/57. I think it is now being printed by Greater Buffalo Press in Buffalo.

Tulsa, Oklahoma, World, December 15, 1957, now I believe being printed at Lufkin.

Fort Wayne, Indiana, News Sentinel, December 15, 1957. I believe it is now being printed in Buffalo. Wichita, Kansas, Beacon, December 22, 1957. I believe it is now being printed in Lufkin.

Gary, Indiana, Post Tribune, December 22, 1957, now being printed in Buffalo. Madison, Wisconsin, State Journal, December 22, now being printed in Buffalo. Rockford, Illinois, Star, December 22, 1957, now being printed in Buffalo; Springfield, Illinois, State Journal, December 22, 1957, now being printed in Buffalo; Colorado Springs, Colorado, Free

81 Press, December 29, 1957, now being printed in Buffalo;

Cedar Rapids, Iowa, Gazette, December 29, 1957, now being printed in Buffalo; Champagne, Illinois, News, December 29, 1957, now printed in Buffalo; Danville, Illinois, Commercial News, December 29, 1957, now being printed in Buffalo; Davenport, Iowa, Democrat, now being printed in Buffalo, the release date 12/29/57; Lewiston, Idaho, Tribune, 12/29/57, now being printed in Buffalo; St. Joseph News Press, December 29, 1957, now being printed in Buffalo; Springfield, Ohio, News Press, 12/29/57, now being printed in Buffalo.

Topeka, Kansas, Daily Capital, January 5, 1958, now being printed in Lufkin; Aberdeen, South Dakota, American, January 5, 1958, now being printed in Buffalo; Casper, Wyoming, Tribune, January 5, 1958, now being printed in Buffalo; Grand Forks, North Dakota, Herald, January 5, 1958, now being printed in Buffalo; Great Falls, Montana, Tribune, January 5, 1958, now being printed in Buffalo; Hutchinson, Kansas, News

Herald, January 5, 1958, now being printed in Lufkin;

82 Joplin, Missouri, Globe, January 5, 1958, now being printed in Buffalo.

Orange, Texas, Leader, January 5, 1958. I don't know where it is being printed. Texas City, Texas Sun, January 5, 1958. Don't know whereabouts of present printing. Rapid City, North Dakota, Journal, January 5, 1958, printed in Buffalo; Salina, Kansas, Journal, January 5, 1958, now being printed in Lufkin; Santa Fe, New Mexico, New Mexican, January 5, 1958, Lufkin; Springfield News Leader, January 5, 1958, Buffalo; Tyler, Texas, Courier, January 5, 1958, Greater Buffalo—rather Buffalo. Tyler, Texas, Courier, January 5, 1958, Lufkin; Greenville, South Carolina, News Piedmont, January 5, 1958, Southern Color Printing Company at Newport News; Detroit, Michigan Polish Daily, January 5, 1958. I don't know. Asheville, North Carolina, Citizen, January 5, 1958, now being printed by Southern Color Printing Company at Newport News; Stephenville, Newfoundland, Canada, News, January 26.—I don't know the name of the paper—1958. I don't know where it is being printed.

83 Longview, Texas—I don't know the name of the paper—February 2, 1958. I don't know where it is being printed. Morehead City, North Carolina—I don't know the name of the paper—April 13, 1958. I don't know where it is being printed.

Denton, Texas, Record Chronicle, March 23, 1958. I don't know where it is being printed. Elizabeth City, North Carolina, Advance, 5/25/58, now being printed by Southern Color Printing Company at Newport News.

Santiago, Cuba, Diario Del Cuba—Mr. Castro will have to give you the answer to that. I don't know where it is being printed.

Houston, Texas, Post, December 7, 1958, either in Greater Buffalo or Lufkin. I think in Lufkin. Morgantown, West Virginia, Dominion, 12/14/58. I don't know where it is being printed. Austin, Texas, Statesman, January 18, 1959, Lufkin; Port Arthur, Texas, News, January 18, 1959, Lufkin; Waco, Texas, Tribune, January 11, 1959, Lufkin; Kilgore, Texas, News Herald—I don't know—January 11, 1959; Pasco.

84 Washington, Tri City Herald, February 22, 1959. Buffalo; El País, Havana, Cuba—we never had release dates on those. They went by numbers—1028-60; Excelsior, Havana, Cuba, 1368-60; Havana, Cuba, El Mundo, 1493-60; Information, Havana, Cuba, 843-60; Diario Del Mariano, Havana, Cuba, 1429-60; Rome, Georgia, News Tribune, January 10, 1960, now

being printed by Southern Color Printing Company at New-
port News.

Lynne, Massachusetts, Telegram, January 24, 1960. I don't know where it is now being printed. Dayton, Texas, Sun, February 14, 1960. I don't know where it is being printed. Wichita, Kansas, Eagle, 6/5/60 last release, Lufkin; Ciudad Juarez, Mexico, Correo, 24-60. I don't know where it is being printed.

Garden City, New York, 6/19/60, Eastern Color Printing Company, at Waterbury; Rosenburg, Texas, Herald, July 10, 1960. I don't know where it is being printed. Pasadena, Texas, Citizen, July 10, 1960. I don't know where it is being printed. Pecos, Texas, Daily Enterprise, August 28, 1960. I don't know where it is being printed. Raleigh, North Carolina, News
85 and Observer, October 9, 1960, Star Color Printing Company at Wilmington, Delaware; St. Albans, West Virginia, Times, October 9, 1960. I don't know where it is being printed.

LaNacion Dominican Republic, 13-60. I don't know where it is being printed. Austin, Texas—perhaps I might have duplicated. At any rate, it is being printed in Lufkin. Brooklyn, New York, Eagle, 11/20/60, out of business.

La Eafera, Caracas, Venezuela, 860-60. We don't know where it is being printed. Bridgetown Barbados, Advocate, 71-61; Diario Del Yaqui Cuidad, Obregon, Mexico, 25-61; Mexico City, Mexico News, March 19, 1962. I don't know where it is being printed and I don't know where those Spanish papers are being printed. I just referred to. McKeeport, Pennsylvania, Daily News, April 16, 1961. I don know where it is being printed.

Q. Mr. Gorman, I believe that you testified that as to certain runs you do not know what happened to them because the
86 contract between the newspaper and the King Features was not your particular province, is that correct, sir?

A. That's right.

Q. In regard to runs which were transferred or left International and commenced being printed at Lufkin, Texas, were such transfers after discussions, or did they follow discussions you had with anyone at Greater Buffalo Press?

A. There were two types of runs transferred. First, runs which we were doing in Peoria. We discussed with Greater Buffalo and transferred them to Greater Buffalo for the reason that there would be a greater savings of transportation. Other runs out of Peoria, we transferred to Wilkes-Barre where the saving

wouldn't be as great and we continued to print those in Wilkes Barre; and then in the meantime it helped take up the slack for the runs which were transferred out of the Peoria Plant to Buffalo. Buffalo gave us quite a considerable part of their business, so that in effect we have as much from Buffalo as they have from us.

Now, there are other papers transferred to Lufkin
 87 which I did not consult with Buffalo about simply because the runs were simply cancelled by King Features for the reason that Buffalo took them from King Features.

Q. Did you ever have any discussions with anyone at King Features as to the desirability of transferring runs from Wilkes Barre to Lufkin?

A. From time to time I discussed with Mr. Nicht, sometimes after the runs were already transferred and sometimes before they were transferred.

88 Q. Now, the ones that were transferred to Lufkin, were with your consent and approval?

A. Yes, sir.

Q. In regard to runs which were printed to Peoria, and then transferred to Greater Buffalo, did the transfer in any way involve the desirability to transfer larger runs to Greater Buffalo?

A. I don't think it was that so much as the saving of transportation, wherever the greatest saving of transportation, could be made.

Q. Were runs ever transferred to Greater Buffalo because of the size of the particular run?

A. No, I think it was almost entirely the transportation angle. Sometimes size doesn't make any difference. Sometimes it is the number of plate changes that are involved. Even though a run may be small, they may have a lot of plate changes and we may have the same plates on the press in Wilkes-Barre for some other run and we would save that make-ready. Therefore, it would be cheaper to transfer it to Wilkes-Barre and save manpower. In other words, the saving of manpower would be greater than the saving of transportation if
 88 it was done in Buffalo.

Q. Is the equipment, to your knowledge, of Greater Buffalo, better able to take care of any larger runs?

Mr. MOORE: I am going to object to the form of the question.

By Mr. FELDMAN:

Q. A while back you testified as to the type of equipment present at International and I believe you testified that the only place that might have a press equal to press numbers 2022 would be a press or similar equipment belonging to Greater Buffalo, is that correct, sir?

A. That is correct.

Mr. MOORE: I am going to object to the form of that.

Mr. FELDMAN: I asked him whether he so testified.

Mr. MOORE: I think you are mis-stating his testimony about "equal to." He was talking about a similar press. I don't think he said anything about equal.

Mr. FELDMAN: Repeat the question, please.

90 (Whereupon the last question and answer were read back by the reporter.)

Mr. FELDMAN: Is your objection still noted?

Mr. MOORE: Yes. I think the record will show he is not using the word "equally". He was using the word, "similar." We hadn't gotten into the question of equating performance of presses. If we did, I would object.

Mr. FELDMAN: Let the word "equal" be deleted and would the witness please answer with the word "similar," as part of the question?

Mr. MOORE: To that I have no objection.

The WITNESS: Similar only in the fact that they were both five-plate wide presses. The Buffalo press could be far superior in other respects to ball bearings, strength of cylinders, and speed of the press and better motor or something. So, therefore, I wouldn't they were equal, but they were similar insofar as the five-plate wide were concerned.

91 By Mr. FELDMAN:

Q. In regard to the total four-page units presently printed by International, has the number of such four-page units decreased, remained the same, or increased since June 1, 1955?

A. They have decreased.

Q. It has decreased. Do you know how much a decrease that has been?

A. I would say that in June 1, 1955, we were approximately twenty-nine or thirty million four-page sections. We are now running about twenty-seven million four-page sections and the decrease is partly a result of several things. Largely, I would

say, a result of the difference of the size of the sections which reduces the numbers of fours which you produce, also the fact that we lost business to Newport News and to Eastern Color and to Wilmington and to the Chicago Newspapers. The business that Peoria took from us, which Buffalo took from us since 1955, they largely made up by giving us other business to take its place. So that there are three or four reasons why we
92 are producing less now than we were in 1955.

Q. Are there any runs which International presently services which are being printed by Greater Buffalo in part, or a fraction thereof, at various times?

A. I am not sure I understand your question. Are there any runs which International prints which International at times calls upon or asks Greater Buffalo to print for them?

A. I don't recall any.

Q. None that you can recall, sir?

A. No.

Q. Does International do any printing for Greater Buffalo?

A. Yes, sir.

Q. About how many page units are, is that, sir?

A. Between about three and four million, four-page sections.

Q. How long has that been going on, sir?

A. Several years.

Q. Are these runs serviced by International or are they serviced by Greater Buffalo?

93 A. These runs that they transfer—what do you mean by "servicing?"

Q. To whom does the publisher look?

A. He looks to Greater Buffalo. No publisher looks to us directly for anything because we have no contracts with any publisher unless there should be a delay in a shipment or something, and at the last minute they will call us to see if we can't hurry it up.

Q. I am referring now to the technical matters that might come up. Now, as to these runs, which I believe you stated you point for Greater Buffalo, to whom does the publisher look?

A. To Greater Buffalo.

Q. In the case when runs have been transferred, what happens thereafter? Does the publisher look to International or to the new printer?

A. The publisher looks to King Features Syndicate.

Q. I am talking about technical information.

A. Ninety-nine times out of one hundred, for any kind of information other than late shipments, they go direct to King Features and King Features come to us.

Q. Did there ever come a time when there were com-
94 plaints about the caliber of the newsprint or ready print?

A. On rare occasions, very, very rare occasions, we might get a complaint about the printing of an ad, but I would say that the results have been excellent and, therefore, we have had no reason for complaint.

Q. Well, has International ever taken up such problems with the publishers directly in the past, at any time?

A. Yes, sir, we have. After the complaint went to King Features, we would go direct to the publisher and I have made it my business over a period of thirty years to contact the publishers with regard to complaints or to ask them how their service was, if they were getting out on time, if they were satisfied with the printing. I did that by calling on the newspapers directly and by writing to them and I considered it as part of my service to King Features.

Q. As part of that service then, you developed a certain relationship with your accounts, is that correct, sir? I mean, the actual publishing accounts?

A. With a few, but I made these trips so seldom—that is there were so many papers to be covered that I got to
95 know a number of them, but not very well.

Q. When the accounts were transferred from International, were you ever called upon to make such trips?

A. I don't think I have made a trip to a newspaper in four years. I haven't been well for four years and I have ceased making trips.

Q. Do you know if anyone on behalf of International has ever made such a trip after a newspaper account was transferred away from the plant of International?

A. I don't recall any, no, sir.

Q. I believe you testified earlier that International employs people who repair, service and recondition its machinery and equipment, is that correct, sir?

A. Yes, sir.

Q. What was the number you gave of such people who are employed?

A. About eighteen.

Q. Since June 1, 1955, have any personnel of International been used to service or recondition machinery and equipment at plants other than those of International?

96 A. For the past eight or ten months, some of our men have been in Sylacauga.

Q. When you say "Some of your men," do you mean people presently on the payroll of International?

A. That's right. And then we bill Buffalo and Buffalo pays us.

Q. How many such people have been assigned?

A. Six maintenance men.

Q. Do you know their names offhand?

A. Zardus, Cognine, Bell—this may sound very stupid of me, but I can't remember the other three.

Q. Mr. Hunt. Does that refresh your memory?

A. No.

Q. Mr. Williams?

A. Williams, yes.

Q. Anyone else you can think of?

A. I can't think of the others.

Q. How long have they been at Sylacauga?

A. Around April or May of last year.

Q. What type of work did they do at International prior to their going to Sylacauga?

97 A. They were on the maintenance staff. When presses broke down or if they had to be rebuilt or replaced cylinders, change folders, they did that sort of work. Some weeks we had a great amount of work for them on regular maintenance work, and other weeks we didn't have so much, and then they worked on this other press, 2022.

Q. Did any of these people, to your knowledge, work on the servicing or reconditioning of press 2022 prior to its being shipped to Sylacauga?

A. I think most of them, at some time or other, did.

Q. Was that a reason in determining that these people to your knowledge, should go to Sylacauga?

A. I think we picked out the one or two that we thought would be best and there was a question, too, of whether we

could pick out the ones whose wives would be willing to go down there.

Q. When you say "we picked out," who made that determination?

A. The foreman.

Q. Did you ask the foreman to make the determination?

A. No, I think it was made—they came to me and asked me if it was all right and others asked the foreman. I didn't believe I ever discussed it with him, who was to go or not to go.

Q. Where did the request come from to send people
98 or ask people to go to Sylacauga?

A. From Greater Buffalo.

Q. Who on behalf of Greater Buffalo, made that request?

A. Walter Koessler.

Q. What position does Mr. Walter Koessler hold with Greater Buffalo?

A. He is the president, I believe.

Q. Do you have any idea what the general wage scale is of the repair people who do the type of work that these people perform at International?

A. Something over \$3.00 an hour.—\$3.00, \$3.25, \$3.30, somewhere thereabouts. I don't know exactly.

Q. Since these people have been down at Sylacauga, have they been getting the same wage scale?

A. No, sir.

Q. What wage scale have they been getting?

A. They are getting a premium rate because it is what they call an erecting job, but exactly what the premium is, I don't know.

Q. Who pays that rate?

A. They pay us, or we pay them and Buffalo pays us.

Q. How long have they been there, sir?

A. Probably about since last April or May.

99 Q. Has Greater Buffalo paid you, paid International any money to date for the advances as to salaries made by International?

A. They have paid it all.

Q. Do you know exactly what type of work these people are performing at Sylacauga?

A. That is a very, very complex question which calls for a comprehensive answer.

Q. Well, in a general sort of way, is it repair work, reconditioning work?

A. They are erecting the press, lining up the cylinders, lining up the folders, lining up the reels, grouting the bed plate, adding new drives, putting in the motor, installing a new greasing system, and probably twenty other different things which I can't recall at the moment.

Q. And doing that work in connection with what press?

A. 2022.

Q. Now, Mr. Joe Clinton, is he employed by International?

A. No, he is employed by Dixie Color Printing.

Q. When did he cease being employed?

A. He has been down there since about May, but he left our employ, I think, about the first of this year, because 100 he was supposed to be what you might call a supervisor there, under our direction in case we operated the plant, and also he continued to work for us in that period and we kept in touch with him daily on the telephone about the job, which he had previously done for us, and which required a very considerable amount of skill. The man who took his place was not able to take it over and do the job as well as Joe Clinton.

Q. Well, can I get the date exactly when he left your employ, the specific date, if you know?

A. No, I couldn't.

Q. When would it be around, did you say?

A. What was that?

Q. What date would it be around?

A. I think around the first of the year. I am not sure.

Q. Prior to his leaving the employ of International, did he concern himself with any matters pertaining to Sylacauga?

A. Yes, very considerably.

Q. Did he spend any time down at Sylacauga?

A. Yes, he was there for eight months, from May until 101 the present time.

Q. And was he concerned during that time with the repair or servicing or conditioning of press 2022?

A. Not actually he himself, no. He had to do with the completion of the building, the completion of the stereotype equipment, and general supervision.

Q. And did he hire people who in turn were concerned with the repair and maintenance of press 2022?

A. I think he hired some people directly down there who were not on our payroll. I don't know anything about them. I haven't been there in a year.

Q. As to the people of International who went down to work at Sylacauga, did he supervise them at all?

A. Well, I would say at that time, direct supervision was in the hands of the foreman, Roger Zardus, but Joe Clinton would act as, let's say, the intermediary or the liaison man between Greater Buffalo and Sylacauga, in putting into effect any changes which the Greater Buffalo engineers thought should be made.

Q. In other words, then Mr. Zardus, the foreman, there, did report to Joe Clinton, is that correct?

A. Yes.

102 Q. Now, since these men have been down in Sylacauga, has International hired any people to replace them at all?

A. No, sir.

Q. Has anyone been hired to replace Mr. Joe Clinton?

A. No, sir. Let me answer that question in another way: No one was required to be hired to replace him directly, to do his work. One man who is there now, is doing his work. We had to hire someone on the bottom to give us a little more—

Q. In other words, someone else in the lower echelon, someone was hired to take up the slack, is that correct?

A. Yes.

Q. Since these people have been down there, how many such people have been hired on the lower echelon to take up the slack in the hierarchy?

A. Possibly one.

Q. No more than one?

A. No more than one.

Q. Have any people had to put in overtime in order to take up this slack?

A. It is very hard to ascribe the reasons for overtime
103 in any department. It may be a rush job, maintenance, or a breakdown, and only certain men could do it who might have had the overtime anyhow, but I would say there has been very little overtime directly as a result of the men leaving.

Q. Mr. Gorman, have you received any information since 1956, in regard to any negotiations or contracts relating to the sale of stock of International, to any corporation or person?

Mr. MOORE: I am going to object to the form of the question with the use of the word, "intimation."

Mr. FELDMAN: I said information.

Mr. MOORE: You said information?

Mr. FELDMAN: Yes.

The WITNESS: I don't have any information to that effect.

By Mr. FELDMAN:

Q. Do you have any knowledge?

A. No, sir, I do not.

Q. Do you know whether anyone has received any information?

A. I have no knowledge of anyone receiving any
104 information on that subject.

Mr. FELDMAN: I have no further questions.

Mr. MOORE: I have rather a lengthy cross examination on this, and I would suggest that we break off now and take it up at 2 o'clock. It is 12:30 now.

Mr. FELDMAN: We will adjourn for lunch until 2 o'clock.
(Thereupon the proceedings were adjourned for lunch until 2 o'clock p.m.)

105 AFTERNOON SESSION, 2 O'CLOCK P.M.

JOSEPH J. GORMAN, resumed the stand and testified further as follows:

Mr. FELDMAN: You are the same Mr. Gorman who testified this morning, is that correct?

The WITNESS: Yes, sir.

Mr. FELDMAN: And you realize you are still under oath?

The WITNESS: Yes, sir.

EXAMINATION

By Mr. MOORE:

Q. Now, Mr. Gorman, this press number 2022, where was that purchased from?

A. Baltimore Post.

Q. And at whose direction did you purchase that press?

A. Walter Koessler.

Q. And on whose account was it purchased?

A. On account of Greater Buffalo Press.

Q. And was the press taken to Wilkes-Barre?

A. Yes, sir.

106 Q. On whose direction was it taken to Wilkes-Barre?

A. Walter Koessler.

Q. What were your instructions with respect to the press when it arrived in Wilkes-Barre?

A. He wanted us to erect the press, line it up, and put in the innovations, which he had in mind, which would bring about pre-registering and allow us to use five-plates wide, rather than four or eight cylinders on the press.

Q. Was there ever any intention upon the part of International, to erect that press for operation at Wilkes-Barre?

A. No, sir.

Q. In other words, your job at International was to do the machine work on that press?

A. Yes, sir.

Q. And where did the plates come from?

A. From Buffalo.

Q. And from where in Buffalo?

A. Some from Walter Koessler, but mostly from the Buer Machinery Company, which I believe was ordered to send them down here by Greater Buffalo Press.

Q. And where did the conception of this rebuilding of
107 the press come from?

A. From Buffalo.

Q. And where did the parts come from?

A. Mostly the parts came from Buffalo.

Q. Now, when you first set this press up in Wilkes-Barre how was it set up; was it set up in an area where it could be operated?

A. No, it was set up in a small building alongside of the main plant, the main Sheldon plant building, which was formerly used to warehouse parts and unused machinery.

Q. Was there any pit made for the press?

A. There was no pit.

Q. Could that press be operated without a pit?

A. You couldn't operate the press without a motor and the motor would have to go with the pit, and there was not enough room behind the press even if it was operating in that room for rolls nor no room in front for the bundles.

Q. In other words, the setup at Wilkes-Barre on that press was purely ^{and} simply to work on it and do the machinery and maintenance and revision work necessary?

108 A. Yes, sir.

Q. Now, do you know whether or not a pit was built for this press at Sylacauga?

A. Yes, sir.

Q. And do you know when that was done?

A. It was built at the same time as the building was erected. We obtained from Buffalo the dimensions that they wanted for the pit, so as to save money in the erection of the building, they did the pit and the whole building at the same time.

Q. And that pit was designed and installed at Sylacauga for the purpose of taking this particular press?

A. For the express purpose of press 2022.

Q. With the exception of a few thousand dollars, which may remain in the balance of the account, has International been paid for all of the work it did on this press?

A. Yes, sir.

Q. Has it been paid for all the parts it supplied to the press?

A. Yes, sir.

Q. And has it been reimbursed for the services rendered by any International personnel to the plant at 109 Sylacauga?

A. That is right.

Q. And these amounts were paid over the years as they were built?

A. Paid over the years.

Q. Now, at Wilkes-Barre, I think you testified that you have the same number of presses now that you had in June 1st, 1955?

A. Yes, sir.

Q. And are you operating five days a week?

A. Yes, sir.

Q. And with three presses?

A. Some presses occasionally go right around the full five days there if they don't run three shifts every day of the five days. Sometimes it is necessary to work a little more than five days.

Q. Well, is your operation today essentially the same as it was in 1955?

A. The efficiency has been greatly improved. Is that what you mean, the way we are operating?

Q. Well, describe what improvements you have had in efficiency?

110 A. The major portion of our labor cost is in the press room and the press room, each press or the average net production per press hour, including time for registering, that is, getting the plate on and fitting it on the press, has been improved by twenty-five percent since 1955.

Q. To what is that improvement attributable?

A. That is due primarily to a pre-registry arrangement which was conceived by Buffalo, put into effect in the Buffalo plant and then after they purchased International Color Printing Company, they told us how to do it. I might add there, that where we would formerly take, say, four hours to put plates on a press and get ready to run, we now do it in an average of two hours or less, so that we would see roughly, two hours in each complete change. That has been a result in the net production increase of about twenty-five percent.

Q. Now, directing your attention just to the Wilkes-Barre plant, how does the volume at the Wilkes-Barre plant compare now with what it was in June of 1955?

A. I would say we are printing three or four million a week, four-page sections more again than in 1955.

111 Q. In other words, at Wilkes-Barre you are printing more today than you did on June 1, 1955?

A. By three or four million.

Q. Now, directing your attention to the period before June 1st, 1955, or as of June 1st, 1955, what was the financial condition of International at that time?

A. We had approximately \$100,000.00 deficit in our working capital, that is, specifically our credit liabilities exceeded our current assets by about \$100,000.00.

Q. And as of December 31st, 1960, what change had taken place in that condition?

A. It had changed to the point where current assets exceeded current liabilities by roughly, \$800,000.

Q. In other words, your net position had changed by \$900,000.00?

A. Yes.

Q. And to what was that change attributable; how did that come about?

112 A. It was a change largely due to the increase in production and also due to a better ink which we were able to buy and get greater coverage from the mechanical process and also to the fact that Buffalo had made it possible for us by some cheaper paper from certain mills.

Q. Now, tell us about this ink. What was the change in the ink?

A. Basically, I don't know what the change was, except we got greater coverage and more strength and, therefore, the cost per thousand four-page sections was less by better than a cent.

Q. Well, now, this new ink supplier was cured through Greater Buffalo?

A. Yes.

Q. At their recommendation?

A. Yes.

Q. And when did you make that change?

A. We made it partially in 1955. We increased the proportion in 1956 and I think that in early 1957, or the middle of 1957, we started to get all of the ink from the new people.

Q. And you bought that ink cheaper than you had before?

A. I wouldn't say that the price was cheaper per pound, I don't remember that, but the coverage was greater, which made the cost per thousand less.

113 Q. And what about the quality of the product?

A. I think the quality of the product improved because we have stronger colors.

Q. Now, prior to June 1st, 1955, who owned the stock of International?

A. Well, Ralph R. Gobin and Mrs. Maisey Scofield.

Q. Did you own any stock yourself?

A. No, sir.

Q. They were the sole owners of the business?

A. Yes, sir.

Q. Now, had they made any further investment in the company for the years prior to June 1st, 1955?

A. No, sir.

Q. Had they made any contribution to the working capital of the company?

A. No, sir.

Q. Had you from time to time, discussed with them, the necessity of improving the working capital position?

Mr. FELDMAN: I am going to object to the question at this time on the grounds that what took place prior to June 1st, 1955, is not germane and not material to this inquiry. Let the record note the objection is based on the fact that we are concerned here with business assets of International Color Printing Company from June 1st, 1955, to the present time.

Mr. MOORE: Well, is your statement that what happened prior to June 1st, 1955, is not germane to this case?

Mr. FELDMAN: No, it is not germane to this discovery proceeding.

Mr. MOORE: Well, I will ask him to answer the question anyway. Will the reporter read the question?

(Reporter repeated question as follows:)

"Q. Had you from time to time discussed with them the necessity of improving the working capital position?"

The WITNESS: Yes, sir.

115 Mr. FELDMAN: In that question, what date does that refer to?

Mr. MOORE: Prior to June 1st, 1955.

Mr. FELDMAN: I am going to object again to the question.

Mr. MOORE: You can object to it, but I am going to have the answer anyway.

Mr. FELDMAN: All right. Let him answer the question then.

By Mr. MOORE:

Q. And as a result of those discussions, had they shown any willingness to improve the working capital position of the company?

A. No, sir. On the contrary, one in particular was constantly seeking dividends, rather than putting money back in.

Q. And on June 1st, 1955, was the financial position of the company in a precarious state?

A. Yes, sir.

Q. Now, how long has International been in the business of printing colored comic supplements?

A. Thirty-seven years.

116 Q. And of those thirty-seven years, how long has it been under contract with King to print exclusively for King?

A. Practically all of the thirty-seven years.

Q. Now, when was the last time you or anybody on behalf of International, solicited the printing of color comic supplements?

A. In the year, 1925. Before, we had an arrangement of an exclusive style of soliciting two papers, and obtained them in 1925 and I have not solicited any since.

Q. And during the past thirty years, or up to June 1st, 1955, for 25 years prior to June 1st, 1955, did International ever have a contract with anybody other than King, to print color comic supplements?

A. None except the two papers I mentioned.

Mr. FELDMAN: At this point I wish the record to note that I object to the question as calling for an answer as to efforts which took place prior to June 1st, 1955.

By Mr. MOORE:

117 Q. How long did you maintain the contracts directly from International to those two papers you referred to?

A. Not more than a year.

Q. So that can you say from 1926, to June 1st, 1955, that International has never had a contract with anyone, other than King, to print Color comics supplements?

A. That is correct.

Mr. FELDMAN: I object to that question on the same grounds urged in the prior one.

By Mr. MOORE:

Q. And can you say that during that period of time, International has never at any time sought such a contract?

A. Yes, sir.

Q. And can you say whether or not International has ever competed with anybody during that time for the printing of colored comic supplements?

A. No, sir.

Q. It has not?

118 A. It has not.

Q. Now, at the time that the stock of International was acquired by Greater Buffalo Press, did International have a contract with King for printing colored comic supplements?

A. We had a carry-over contract with six months notice; in other words, we had what you might call a six months contract.

Q. And that was the only contract you had with anybody for printing?

A. Yes, at that time—well, at any time.

Q. And under the terms of that contract, was King obligated to print any specific runs at International?

Mr. FELDMAN: I object to that question as to form, violation of the Parole Evidence Rule, namely, the terms of that contract.

Mr. MOORE: You may answer.

The WITNESS: Well, will you ask that question again, please?

(Reporter repeated the question as follows:

119 Q. And under the terms of that contract, was King obligated to print any specific runs at International?"")

A. No, sir.

Q. Now, subsequent to June 1st, 1955, was a new contract negotiated with King?

A. It was discussed.

Q. And—

A. It was not renewed.

Q. The contract was not renewed?

A. It was not completed prior to June 1st, 1955.

Q. Well, subsequent to 1955, was there a contract eventually entered into?

A. Yes, two months later. The exact date I don't know.

Q. And was that contract substantially similar to the contract that had preceeded it?

A. Substantially.

Q. And under the terms of that contract, was King obligated to print any specific runs at International?

A. No, sir.

120 Mr. FELDMAN: I again renew my objection as to any declaration by the deponent as to the terms of a written contract.

By Mr. MOORE:

Q. Now, subsequent to June 1st, 1955, I think you testified that there were certain runs that were formerly printed at International which were no longer printed there?

A. Yes, sir.

Q. And you testified to a rather long list of papers?

A. Yes, sir.

Q. Now, of course, International had no contracts with any of those papers, did they?

A. No, sir.

Q. And the changes that were made in the runs were occasioned to some extent by business that King had lost, were they not?

A. Yes, sir.

Q. In other words, when King lost the business, International lost the run?

A. Yes, sir.

Q. Lost the printing of the run?

121 A. The printing.

Q. Certain of these runs were lost by King to Greater Buffalo, were they not?

A. Yes, sir.

Q. Certain were lost to the Newport News?

A. Yes, sir.

Q. Certain others to Eastern?

A. Yes, one to Eastern.

Q. One to Eastern?

A. Yes.

Q. Some to Star?

A. One to Star.

Q. And certain of the other papers went out of business?

A. Some went out of business.

Q. And certain of the others, the papers undertook to do the work themselves, did they not?

A. We don't know that some of the others undertook to do it.

Q. And you don't know, because it wasn't your function to get that business, was it?

A. No, sir.

122 Q. Prior to the time this press 2022 was shipped to Sylacauga, was there some kind of an accident which affected it?

A. Yes.

Mr. FELDMAN: I object to the form of the question, namely, an accident, that it calls for a conclusion.

By Mr. MOORE:

Q. I will re-phrase the question. Did something happen to it?

A. Yes, the floor settled underneath the press and threw it completely out of line.

Q. Will you describe for us what you mean by throwing it out of line?

A. When a press is set up, it has to be set up with a tolerance of thousandths of an inch, so that the cylinders and folder and so forth will run smoothly. If the press had been set up on a pit built specifically for that purpose, the chances are that nothing would have happened. But it was set up on an old floor which wasn't thick enough and the floor settled and the press settled with it and threw practically everything out of line.

123 Q. Did that require the redoing of a considerable amount of work?

A. A very considerable amount of work would have to be redone after the press went to Sylacauga.

Q. That work was subsequently done at Sylacauga?

A. Yes.

Q. Now, after the press went to Sylacauga, were there other changes made?

A. Well, I haven't been there, but I have known of other changes such as the installation of a greasing arrangement, an automatic greasing arrangement which the press never had, the changing of the drive was put in, a double drive instead of a single drive, and various other changes with which I am not too particularly familiar.

Q. Now, where were those changes directed from, who designed those changes?

A. Walter Koessler, of Greater Buffalo, or the Buerk Machine Shop.

Q. Is Buerk Machine Shop the machine shop that does a lot of work for Greater Buffalo?

A. Yes.

Q. Located on the premises next to Greater Buffalo?

124 A. That is correct.

Q. Now, during the course of your examination, you testified that some runs were transferred to Lufkin with your consent and approval. Now, I ask you whether you had any power to consent or approve to the transfer of any runs?

A. No, sir, I didn't.

Q. Because the business you had was King's business, was it not?

A. That is right.

Q. Now, subsequent to June 1st, 1955, did you at International, print runs for persons other than King Features?

A. Yes, Greater Buffalo.

Q. And I believe you testified that you received from Greater Buffalo, business that was substantially equivalent to the business that had been lost at the time when Peoria closed?

A. About equal.

Q. So that the net result as far as Wilkes-Barre was concerned, volume-wise, it was about equal?

A. That is right.

Q. Of course, prior to June 1st, 1955, and for thirty
125 years prior thereto, International had never done any
printing for anybody other than King?

A. That is right.

Q. Now, has Greater Buffalo caused to be removed from
International at Wilkes-Barre, any machinery or equipment
that has impaired the operation of the Wilkes-Barre plant?

A. No, sir.

Q. And has your maintenance suffered at Wilkes-Barre by
reason of the assignment of certain maintenance personnel to
do certain work at Sylacauga?

A. That is a pretty hard question to answer. I mean, I
couldn't draw a line in black and white and say whether they
suffered a little or not. In time, it may. I don't know.

Q. You haven't had any trouble from it?

A. That is right. The fact that we are still running twenty-
five percent better than we were in 1955, indicates we didn't
have too much trouble.

Mr. MOORE: Can we take about a five minute break and
maybe we will finish up here.

Mr. FELDMAN: Yes.

126 (Short recess taken.)

By Mr. Moore:

Q. Mr. Gorman, at the time that you purchased at the direc-
tion of Greater Buffalo, this press 2022 did you have any con-
ceptions of the plans that had been made for transforming it?

A. No, sir.

Q. And when did you first learn what was to be done to it?

A. I saw cylinder lines on the floor of the machine shop up
here; that looked a little bit different than anything I had seen
before, and Mr. Koessler said, "That is for a 5-plate press they
are putting up!" That would be the same then for the press they
were putting up in Wilkes-Barre. That was about 1956.

Q. Had you ever heard of a press like that before?

A. No, sir.

Q. Had any of the crew that was working on it in Wilkes-Barre, had they had any experience with a press like that before?

A. No, sir.

127 Q. And by whom was this 5-plate press conceived?

A. Either by Buerk or Walter Koessler, but the information came to us from Walter Koessler. I don't know.

Q. This was a wholly new conception in the business, to your knowledge?

A. To the best of my knowledge, yes.

Mr. MOORE: I think you may ask.

Mr. FELDMAN: Do the other counsel here have any questions?

Mr. LONDON: No questions.

Mr. STEVENS: No questions.

By Mr. FELDMAN:

Q. Mr. Gorman, prior to the time you purchased press 2022 at the direction of Mr. Koessler of Greater Buffalo Press, to you knowledge, had International at any time in the past, ever purchased a press on behalf of another printer?

A. No, sir.

Q. Was there any time in the past when International on behalf of another printer, took a press and had the press altered?

128 A. Not that I can recall.

Q. Was there any time in the past that International assigned personnel to work with another printer?

A. No.

Q. At the time that you purchased press 2022, who on behalf of International, actually went out and negotiated for the purchase of the press?

A. Tom Brennan.

Q. Did Tom Brennan report back to you?

A. Yes, sir.

Q. And who had the final word, as far as International was concerned, in regard to the purchase price?

A. No one had the final word at International. I had to consult with Walter Koessler.

Q. What position does Tom Brennan hold in International?

A. Purchasing agent.

Q. And in connection with the negotiation for the purchase of press 2022, did Tom Brennan go and speak to the people at Baltimore?

A. Yes.

Q. And was this during the time that Tom Brennan was being paid by International Color Printing Company?

129 A. Yes, sir.

Q. Has Tom Brennan, since that time, been in the continual employ of the International Printing Company?

A. Yes, sir.

Q. Has he, at any time, taken leave of International Color Printing Company?

A. No, sir.

Q. Was International Printing Company reimbursed for the time spent by Tom Brennan in going down and negotiating for the purchase of the press?

A. No, sir.

Q. How long did that negotiation take?

A. Very brief, a month or two.

Q. And about how many trips did that involve on the part of Tom Brennan?

A. One or two at the most.

Q. Did Mr. Tom Brennan report, at any time, directly to Walter Koessler, or did he always report to you?

A. He reported to me.

Q. Did you, at any time, ever make a trip up here to Buffalo to consult with Walter Koessler with regard to that purchase?

130 A. I don't think I made a specific trip, but I discussed that with him here, but whether I made a specific trip for that, I don't know.

Q. I believed you testified under the examination of Mr. Moore, that at Sylacauga, a pit was built, is that correct, sir?

A. That is correct.

Q. And that pit presently houses, I take it, press 2022?

A. Yes, sir.

Q. Were there any personnel of International Color Printing Company engaged in building or making that pit?

A. No, sir.

Q. Did any personnel at International Color Printing direct, or in any way scheme or conceive of the manner in which that pit was to be built?

A. Mr. Walter Koessler told us that the pit was to be built for 2022 and whether he gave us the drawing for the pit, or whether we got the drawings from Hoag and Company, I am not sure, but I think we must have gotten the drawings from Walter

Koessler for the reason that when the press was
131 erected in Baltimore, it was erected as a six-deck high
press, two tiers, two stacks and, therefore, the new pit
would have to form on account of having the lower of the six-
deck, to four, and extending the tier, it would have to be a
longer pit than originally used in Baltimore. It was our custom
always when we needed drawings, to go to Goss or Hoag for
any of those presses, which they had originally built.

Q. At that time, did you ever visit Sylacauga and see the
pit and the building?

A. Yes, sir.

Q. And this was prior to the shipment of press 2022 or
after the press was shipped down there?

A. I never was there since the press was shipped.

Q. In other words, immediately prior to, or prior to the
shipment of the press, did you go down and investigate the
way the pit looked?

A. Not immediately after. I was there in a year.

Q. Did you see the pit before the press came down?

A. I did see the pit.

Q. Was that one of the purposes you visited them, to look
at this particular pit?

132 A. Not to look at that particular pit. It was to see
how things were going. In fact, I had only gone on one
trip in the last two or three years.

Q. Well, how long did you stay when you made that trip?

A. Overnight.

Q. Now, I believe you testified a little while back that since
the acquisition of the stock of International Color Printing, the
efficiency of International has increased about twenty-five per-
cent as to the operation of the presses?

A. Yes, the net per hour has been increased by twenty-five
percent.

Q. Has that come about because of the ingenuity used by
people at International or because of the technical knowledge
received from Greater Buffalo?

A. The technical knowledge received from Greater Buffalo.

Q. Now, prior to the acquisition of the stock of International Color Printing Company, did International rely upon the technical know how of any other printer?

A. No, sir.

133 Q. I believe you testified a little while back that as to the four-page units, more four-page units are presently printed at Wilkes-Barre than prior to June 1st, 1955, is that correct?

A. Yes, sir.

Q. Or at least since June 1st, 1955?

A. Yes, sir, by June 1st, 1955.

Q. Now, you mean, if I am correct when I heard some testimony by you, and you correct me if I am wrong, that the total number of four-page units since June, 1955, has been less at Wilkes-Barre than before, is that correct?

A. No, I didn't say that. I said the total number of supplements printed was less. That included Peoria and Wilkes-Barre.

Q. And by supplements—

A. Four-page sections.

Q. Now, I believe you testified a little while back that the assets, money-wise, as to International Color Printing Company, have increased since June 1st, 1955, is that correct, sir?

A. Yes, sir.

134 Q. And has this also come about because of the technical knowledge acquired from Greater Buffalo Press?

A. Largely.

Q. What are the other factors?

A. The other things, as I indicated before, lower cost of ink per thousand and a better price on some newsprint.

Q. With regard to the exchange of technical knowledge, did you exchange with Greater Buffalo Press, cost summary as to work produced per hour, or any other unit of measurement?

A. Yes.

Q. And did they exchange that information with you?

A. Did they give me that information?

Q. Yes, sir.

A. No, sir.

Q. As to their production?

A. No, sir.

135 Q. Now, prior to June 1, 1955 did you exchange such information with any other printer?

A. From time to time over the years I was on very friendly relations with the superintendent up at Waterbury, Connecticut and we talked about mechanical things and he came down to our place and I went up there. Also from time to time I went down to Newport News and they came up to our place and exchanged information.

Q. Was that just general information over a long period of time or was there a regular systematic exchange?

A. No. I just happened to drop in there or they happened to drop in our place.

Q. What is the case with regard to Greater Buffalo, is there a systematic exchange or is it rather sporadic?

A. Sporadic.

Q. And does International generally feel free to call upon Greater Buffalo at the present time?

A. Yes, sir.

Q. In the past has there ever been such relations with any other printer, namely, the one you have with Greater 136 Buffalo, with regard to the exchange of information?

A. Only when I just explained, from time to time we exchange information with Newport News and also one time we exchanged information with Acme in San Bernardino, the superintendent there came to visit us and I went to visit them.

Q. With regard to Acme and with regard to Eastman Color, the printers you just mentioned in Waterbury, did you ever exchange establishing accounts which each company was then servicing?

A. I couldn't do that if I wanted to because I had no control of accounts.

Q. Well, did you ever exchange information?

A. Yes.

Q. Have you ever exchanged such information with Greater Buffalo Press?

A. Exchange accounts?

Q. Exchange knowledge about accounts?

A. No.

Q. With—

A. Since 1955?

Q. Yes, since 1955?

137 A. Yes.

Q. Have you exchanged such information?

A. Yes.

Q. Have you ever exchanged such information with any other printer?

A. No, sir.

Q. Now, in regard to the purchase of ink supplies, has International ever purchased ink from any other printer or through any other printer?

A. No, sir.

Q. And I take it or am I correct in your testimony that such purchases have been made from Greater Buffalo, is that correct?

A. Of a chemical process.

Q. That Greater Buffalo has worked out, is that correct?

A. They arranged the chemical process to sell us ink.

Q. Where do the raw materials come from?

A. I have the slightest idea.

Q. Where do you purchase the raw materials?

A. It comes to us already prepared.

Q. Who prepared the ink?

A. Chemical Process.

Q. Is that the name of a company?

A. Yes.

Q. Does Chemical Process also sell to Greater Buffalo?

A. Yes, sir.

Q. And they also sell to you, is that correct?

A. Yes, sir.

Q. Now, is this a peculiar technical knowledge which Greater Buffalo is able to benefit from and also International?

A. Yes, sir.

Q. Do you know of any other printers that get such technical knowledge or the benefits of such a mixing process?

A. I do not know anything about any ink costs of any other printer or where they buy it or what arrangement they have about using such a process.

Q. Prior to your getting such technical process or chemical suppliers?

A. International purchase ink from regular ink suppliers.

A.

139 Q. Yes, sir.

such Did International have continual contacts with

A. Yes, sir.

Q. Does International presently have such contact with ink suppliers?

A. Other ink suppliers still drop in to see us, yes.

Q. But you haven't made any purchases recently from them, have you?

A. No, sir.

Q. Now, in regard to runs on newspaper accounts, did Greater Buffalo at any time ever tell you or anyone else at International which account to transfer to Lufkin or any other subsidiary of Greater Buffalo?

A. They transferred, when they took runs, when we transferred them to King Features, any way it was done, runs went from Peoria to Buffalo and later just by running down to Peoria and they did so because it was going to be cheaper and I passed on the word to King.

Q. It was a direction from Greater Buffalo to International to transfer the run, is that correct?

140 A. Yes.

Q. And you had no say in the matter at all, is that correct?

A. I had nothing to do with the runs.

Q. In other words, you just received a direction from someone at Greater Buffalo and you merely carried it out?

A. I notified King Features of the matters and so forth and notices were sent to Lufkin.

Q. When you notified King Features, did you let them know that this was a determination made by Greater Buffalo?

A. Yes, sir.

Q. In regard to the changes of press 2022 at Sylacauga, you know whether these changes have been made by the personnel of International now at Sylacauga?

A. They have been making them over the past eight or nine months. How far they have gone towards completion, I don't know.

Q. Do you know whether any other technical men outside of the men from International are working in Sylacauga?

141 A. Yes, there is a man who occasionally goes there from here to Buffalo.

Q. But the bulk of the technical personnel presently working in Sylacauga are from International?

A. I don't know who they have there other than ours, other than our men I don't know how many men they have there other than our men. I don't know who the Greater Buffalo men are or what they do or how long they stay. I haven't been

there in a year and I haven't been familiar with anything taking place—

Q. Do you know whether or not people from Greater Buffalo are presently now at Sylacauga?

A. No, I don't.

Q. Do you know whether technical people from any other subsidiary of Greater Buffalo other than International are at Sylacauga?

A. I don't know anything about anything that has taken place at Sylacauga.

Q. Did you ever have any discussions with Joe Clinton as to the time element involved in getting press 2022 ready to function?

A. Yes.

142 Q. When did you have such discussions with him the last time?

A. Probably three months ago.

Q. Did Joe Clinton ever indicate to you in any way that he was relying on the people from International to get such press ready?

A. I knew that he was relying on them.

Q. Did he ever indicate to you how much he was relying upon the people from International?

Mr. MOORE: I object to the form of that, how much.

Q. Let's delete "how much". Did he ever indicate to you that he was relying upon the people from International to get the press ready?

A. Yes.

Q. Now, a little while back you were asked by your counsel about some of the machinery which has left International and I believe you testified that International presently has not suffered any loss because of such transfer, is that correct?

A. That is correct.

Q. I believe you also said that what might happen 143 in the future you can't tell at the present time?

Mr. MOORE: I object to that. That isn't what he said. We are talking about maintenance.

Mr. FELDMAN: Let me ask the witness what he said.

Mr. MOORE: I can make an objection, counsel, and I will make my objection on the record and you ask the question.

Mr. FELDMAN: Let the objection be noted.

The WITNESS: Could I have the question again, please?

(The reporter repeated the question as follows:

"Q. I believe you also said that what might happen in the future you can't tell at the present time?"")

By Mr. FELDMAN:

Q. Is that your testimony?

A. You have to go back further than that. I don't think that is a complete question.

144 Q. Let me rephrase the question. I believe you testified and you tell me whether or not I am right, that as far as equipment leaving International, International at the present time has not suffered any damage as far as the efficiency is concerned, their present efficiency?

A. No, that was not the question I answered. One question I answered was has the machinery at Wilkes-Barre suffered any as a result of maintenance men not being there, not erecting of material leaving there, and I said as far as I know, no, it has not, but I couldn't tell you what might happen in the future.

Q. That is what I am getting at.

Mr. MOORE: I will remark again that that was not what your question was.

Mr. FELDMAN: Well, he gave me an answer, counsel.

Mr. MOORE: Well, when you asked the right question, he did

By Mr. FELDMAN:

Q. As far as the machinery, the present machinery at Wilkes Barre is concerned, is it your testimony then that as far 145 as the future, you cannot presently determine what the affect of the transfer of leaving of maintenance men from International will have upon the maintenance of that equipment?

A. No one in the printing business at any time knows what is going to happen in the future and when it does happen, they don't know whether it is the reason of men not being there or not. Accidents take place and we are very seldom able to account for the reasons.

Q. Now, early today I believe you testified, and correct me if I am wrong, that many of the machinery and equipment that International has has been put together by the ingenuity and skill of people at International and also that equipment was purchased at various times and put together, is that correct?

A. Yes.

Q. Is International at the present time able to purchase in an open market any of the machinery and equipment which

was shipped from Wilkes Barre to either Sylacauga or Greater Buffalo Press?

A. From day to day I don't know what is going to be 146 on the market. Tomorrow I might pick up the Editor and Publisher and find there is a lot of equipment for sale. There might not be any for sale for a month or more, so it is hard to tell when it will be on the market. At any rate, we have equipment from Wilkes Barre which can be rebuilt in case we have an expansion.

Q. In regard to the specific equipment which left Wilkes Barre, can International at any given time go out in the market and repurchase or duplicate that equipment?

A. I can't answer that. I don't know what is going to be on the market tomorrow or a month from now or today.

Q. Does the market change from day to day as to what is available?

A. Yes. We can buy nothing but used machinery and we don't know when the newspapers are going to say, "We don't need this any more; you may have it."

Q. Is the availability of such machinery decreasing or increasing?

A. Decreasing because they have ceased making that type 148 of machinery quite a few years ago.

Q. At the time International purchased press 2022 at Baltimore did you know that that press eventually was going to be shipped to Sylacauga?

A. Yes, sir.

Q. And at the time you received directions from Mr. Walter Koessler to purchase that press did he indicate to you at that time that the press was eventually going to be shipped to Sylacauga?

A. Yes, sir.

Q. Now, I believe you stated that International was repaid for the purchase of that press, is that correct?

A. Yes, sir.

Q. When, can you recall now, was International repaid?

A. Three or four months ago.

Q. Was that the entire amount or were payments made over the year?

A. There were payments made over the year.

Q. How soon after the initial amount was laid out, namely, \$32,500, was International repaid?

A. Just repaid recently, within the last three or four
149 months.

Q. What I want to know is was the amount for the entire press and the work put in on the press paid all in one sum in the last few months?

A. Yes, sir.

Q. Or were payments sporadic over the years?

A. For the work on that press, the work was paid within the last couple months.

Q. And that included the original purchase price and also the work on the press?

A. Yes, sir.

Q. When you say "within the last few months" was that since January 1961 or was it before January 1961?

A. I think it was before January 1961.

Q. Can you recall how much before January 1961?

No, I would like your recollection.

A. I can't give it to you.

Q. Then, state you don't know.

A. I don't know.

Q. Do you have any records here which would indicate when payment was made to International for that press?

A. Yes, sir. Payments made to who for that press?

150 Q. To International from Greater Buffalo. Can you give me an answer on that, sir?

A. In January of 1961.

Q. Do you have a more specific date when you say "January"? Is there any given day there?

A. No, it just says January 1961.

Q. Do you recall when that payment was made, or did it come in the normal course of business of International?

A. In January 1961.

Q. No. Did you actually receive the check or mode of payment, or did it come to International in the regular course of business?

A. It came to International in the regular course of business. They were billed and they paid for it.

Q. Now, immediately prior to the purchase of press 2022 was it ever contemplated that International would engage in the operation of a plant at Sylacauga?

A. Yes.

Q. And what is the present arrangement in that regard?

151 A. We are not going to put a press down there now.

Q. Who made that determination?

A. Which determination?

Q. The determination that International would not operate a press at Sylacauga?

A. I think it is quite obvious that there would be no point in putting one down there.

Q. Well, prior to the time that press 2022 was purchased by International was there a determination made that International would put a press down in Sylacauga and would itself operate that press?

A. Prior to the purchase of International by Greater Buffalo Press, International had planned to put three single width presses down there.

Q. I am talking now prior to the purchase of 2022 in 1955 and immediately prior thereto. Was there a determination made that International was going to operate a press at Sylacauga?

A. No, sir.

Q. When was the determination made that International would not operate a press at Sylacauga?

152 A. Immediately after the purchase of stock by Greater Buffalo Press.

Q. When would that be, around June 1955?

A. June 25, 1955.

Q. In talking now again about the four-page unit production of International in or about June 1955 there was production or there was printing of color comic supplement at both Peoria and Wilkes Barre, is that correct, sir?

A. Yes, sir.

Q. Can you recall now what the total four-page unit of production was for both plants, namely those located at Wilkes Barre and the one at Peoria?

A. As close as I can recall, about 29,000,000.

Q. Presently what is the production of four-page units of color comic supplements at the Wilkes Barre plants?

A. A maximum of 27,000,000. Some weeks we run a little less than that; some weeks we are down to 25,000,000, but on the average over the past three months I would say about 27,000,000.

Mr. FELDMAN: I have no further questions.

Mr. MOORE: There is one matter I want to discuss
153 and I think I can finish up.

Mr. WEISS: Why don't we take recess.

Mr. MOORE: Can we take a five-minute break?

Mr. FELDMAN: Yes.

(Short recess taken.)

By Mr. MOORE:

Q. Now, Mr. Corman, you testified just a moment ago as to—I think you used the word "plans" that International had for a southern plant, is that right?

A. Yes, sir.

Q. What was the nature of those plans? How far had your plans progressed?

A. We hadn't progressed at all because we, first of all, needed financing or the prospect of financing and the owners didn't have the money and we saw no prospect of getting it from anyone else.

Q. So, as of June 1, 1955 whatever plans International had were completely impracticable for lack of financing, is that right?

154 A. That is correct.

Q. And you had not progressed to the stage of any concrete plans at all?

A. No.

Q. You didn't know whether you were going to get the financing?

A. No, sir.

Q. You didn't?

A. No, sir.

Mr. MOORE: I think that is all.

Mr. FELDMAN: Do any of the gentlemen here have any questions?

Mr. STEVENS: No.

Mr. LONDON: No.

By Mr. FELDMAN:

Q. Isn't it a matter of fact, Mr. Gorman, that on or about or even immediately prior to June 1, 1955 you had reached a determination that a plant would be built at Sylacauga?

A. No, we had no specific plans to do it because we saw no prospect of getting the money.

Q. In regard to obtaining newsprint were any plans materializing?
155

[initials] A. Newsprint was promised to us in the beginning, say, in 1954, but then we were told that because we had no contracts they wouldn't care to sell newsprint to us. They would sell it directly to King Features and then King Features would sell it to us provided we had a plant.

Q. And did King Features or the Hearst Corporation enter into such a contract?

A. Yes, sir.

Q. On June 1, 1955 was such a contract outstanding between the Hearst Corporation and the Coosa River Company?

A. I think it was—I don't know whether it was exactly at that time or before or after, there was a contract, but I don't remember the dates.

Q. At any rate, on June 1, 1955 such a contract had been entered into already, is that correct?

A. That's right.

Q. And was an assignment made or did the Hearst Corporation indicate that the newsprint would be made available to International Color Printing Company?

156 A. If we had a plant.

Q. In other words, if you had a plant, such newsprint would be made available to International Color Printing Company, is that correct, sir?

A. Yes, sir.

Mr. FELDMAN: I have no further questions.

By Mr. MOORE:

Q. But you couldn't have a plant without the money?

A. I had no money.

Q. And you didn't have the money to build the plant?

A. No.

Q. And International Color had no interests at all in whatever arrangement Hearst had made with Coosa River?

A. We had to stay out of it entirely because they would not deal with us directly for newsprint.

Q. And you were not a party to any such contract?

A. No.

Q. What became of the contract you don't know, do you?

A. I don't know whether it is dead for lack of performance or what. I haven't heard anything about it in several years.

157 Mr. MOORE: That is all.

Mr. FELDMAN: One question, then, Mr. Gorman. In regard to any openings at Sylacauga do you know where the newsprint will come from?

The WITNESS: No, I do not.

Mr. FELDMAN: You have no idea at all?

The WITNESS: No, I don't.

Mr. FELDMAN: I haven't anything further.

Mr. MOORE: I think that is all.

Mr. FELDMAN: Off the record.

(Discussion off the record.)

Mr. FELDMAN: The attorneys for the parties hereto stipulate as follows: Joseph J. Gorman shall complete his deposition by attaching to the transcript and making a part thereof a written statement setting forth the insurance coverage presently placed upon the printing presses and the attachments thereof, including folders and reels, serial type and mechanical equipment, and all other machinery and equipment used or capable of being used in connection with the printing or handling of color comic supplements now in the possession or control of the defendant, International Color Printing Company. Such statement shall also state the name of each insurance company insuring the particular machinery and equipment and the insurance policy number covering same. In addition, the statement, where possible, shall state the schedules annexed to such insurance policies covering the equipment and machinery referred to above.

Is there any objection to that at all?

Mr. MOORE: No. That is all right.

Mr. FELDMAN: It is further stipulated that the deponent, Joseph J. Gorman, may sign the deposition before a notary public in the State of New York or the State of Pennsylvania and that the deponent shall sign the deposition and return same to the reporter hearing this deposition one week after receiving same and return the signed deposition to the reporter for certification and filing.

Anything else?

Mr. MOORE: Nothing else for me.

Mr. STEVENS: Nothing else.

Mr. LONDON: Nothing else.

Mr. FELDMAN: By stipulation of counsel for the parties hereto the deposition of an officer or representative of the

Greater Buffalo Press Incorporated is adjourned until tomorrow at 10:00 A.M. at this place.

[Caption Omitted in Printing]

161 Deposition of WILLIAM HAMMOND taken at 502 U.S. Courthouse, Buffalo, New York, on April 18, 1961.

WILLIAM HAMMOND, having first been duly sworn, was examined and testified as follows:

EXAMINATION

162

By Mr. FELDMAN:

- Q. Will you please state your name and address?
 A. William Hammond.
 Q. Where do you reside?
 A. Lakeview, New York.
 Q. Is that your whole address?
 A. Old Lake Shore Road, Lakeview, New York.

Q. What company, if any, are you associated with?

163 A. The Greater Buffalo Press.

Q. Do you have any position or is there any title to the position you occupy with Greater Buffalo Press?

- A. The office of treasurer.
 Q. How long have you held that position?
 A. Since about 1955 I guess offhand.
 Q. Before that time were you also associated with Greater Buffalo Press?

- A. Yes, I was.
 Q. In what capacity?
 A. As assistant treasurer.
 Q. How long were you assistant treasurer?
 A. From 1946.
 Q. Prior to that time were you also with Greater Buffalo Press?
 A. In a part time capacity from 1930 to 1946.
 Q. What job did you do or fulfill during that period of time?
 A. I handled all the accounting procedures and tax matters.
 Q. Are you an accountant by profession?

A. Yes. I don't mean that I am a C.P.A., Mr.
 164 Feldman.

Q. I understand that. Where do you maintain your office?

- A. 302 Grote Street, Buffalo, New York.
 Q. Is that the main office of Greater Buffalo Press?
 A. It is.
 Q. As treasurer of Greater Buffalo Press Incorporated are you familiar with the nature and types of records received, made and kept by Greater Buffalo Press in the regular course of their business?

A. I am.

Q. Have you personally participated, whether in a supervisory capacity or not, in the actual mechanical operation of any machinery and equipment relating to the printing of color comic supplement?

The WITNESS: Would you repeat that please?

(Whereupon the last question was read by the reporter.)

A. No, I have very little relation to the mechanical
165 matters.

Q. Have you at any time participated in the selling of color comic supplements to publishers or to other people who, in turn, sell to publishers?

A. Yes, I have.

Q. When did you so participate?

A. Oh, over quite a number of years I would say, for the past eight or ten years.

Q. What generally have you done in that regard?

A. What have I done?

Q. Yes.

A. Well, I have never with the exception of one or two instances negotiated original contracts with publishers, but I have taken over the servicing of a number of them and called on them from time to time, and subsequent to the initial contracts I have from time to time negotiated any changes in the contracts or price arrangements and things of that nature.

Q. Was that generally concerned with the billing between the two companies?

A. Yes.

Q. Did you make any decisions in that connection or were you merely carrying out the policy that had been laid
166 out by other people in Greater Buffalo Press?

Mr. MOORE: Before you answer that, I just want to interject at this time to call attention for the purposes of the record that the examination is progressing beyond the scope of the order. I am not going to object to it, but I just want to note that.

Mr. FELDMAN: May the record indicate that I am only interested in what his familiarity is with the operations of the company. No questions at this time have been directed to any operations of Greater Buffalo Press beyond the scope of the order.

Will you repeat the question please?

(Whereupon the last question was read by the reporter.)

Mr. MOORE: You may answer.

167 A. Well, as a long time associate of the company and being in a confidential capacity, I had considerable latitude in using my judgment, and when it was necessary to make a decision on my own, I did it.

Q. Now, was that your regular job or was that merely incidental to your job as treasurer?

A. Well, I was also business manager and there are a lot of matters besides accounting procedures that came under my authority, if you want to call it that.

Q. But your main job then is in regard to the accounting procedures, is that correct?

A. Mainly, yes.

Q. Did you come in today with any records from Greater Buffalo Press or a synopsis of any records which you have examined?

A. I have memorandums here that I think you say in lieu of records.

Q. Yes, that is what I am talking about, sir.

A. Yes, I have some memorandums here.

Q. Now, in regard to the records you have before you or any memoranda, do they indicate that any machinery
168 and equipment was shipped from International's plants at either Wilkes Barre or Peoria, Illinois, to Greater Buffalo at anytime since June 1955?

A. Yes.

Q. When was such equipment and machinery shipped?

A. Well, in the instance of machinery that came from our Peoria plant, it was after the closing of that plant, which I think was in 1957, if I can recollect.

Q. It might have been 1958 or aren't you sure?

A. When the Peoria Plant was closed?

Q. Yes, sir. Well, at any rate—

A. I am not sure—1957.

Q. At any rate it was 1957 or 1958, is that correct?

A. Yes. 1957, I think it was. I think it was the end of 1957.

Mr. Feldman.

Q. All right.

A. Yes, these shipments of machinery probably occurred sometime during 1958.

Q. All right. What machinery and equipment was that?

A. Well, actually we made no record of any trans-

169 fers of machinery from Peoria because mostly it was
obsolete items that were fully depreciated and we made
no book entries for that reason. I don't happen to have a record
of all the individual pieces of machinery that came into Buf-
falo from Peoria but the International Color Printing Com-
pany did keep a record of those items of machinery.

Q. Now, what you just told us in regard to the state of the
machinery, did you personally inspect the machinery or were
you so informed by other people?

A. I was informed by other people. I didn't inspect the
machinery.

Q. Can you recall who so informed you at that time?

A. Who what?

Q. Who informed you about the state of the machinery?

A. Oh, I think mostly Jerry Dunbar who was at one time
manager of the Peoria plant, and Mr. Koesler himself.

Q. You mean Mr. Walter Koesler?

A. Yes, and our mechanical people.

Q. Now, who paid for the transportation from the
170 Peoria plant to Greater Buffalo?

A. I believe all that machinery was transported in our
own trailers.

Q. And when you say your own trailers, you mean trailers
belonging to—

A. Owned by the Greater Buffalo Press, yes, sir.

Q. Do you know or do you have any list of that machinery
at all?

A. No.

Q. None at all?

A. No.

Q. Have you received any information as to what it con-
sisted of?

A. Yes. I know in a sort of a way that it consisted mostly of
some stereo-type equipment.

Q. And do you know how large that equipment was?

A. How large it was?

Q. How large it was; did it take up a whole truck or two
trucks?

A. Well, I don't recall that, Mr. Feldman, but there were things in there like a melting pot and casting box. There was other stereo-type equipment like tail cutters, shavers, 171 and plate splitters and the ordinary type of machinery that is used in the stereo-type operation.

Q. Do you know whether that equipment represented all the stereo-type equipment of the Peoria plant?

A. I don't remember.

Q. Do you recall or do you know what type of truck or trucks were used in transporting the equipment?

A. Well, at that time we had all GMC tractors and trailmobile trailers.

Q. And how large are those trucks tonnage-wise?

A. Tonnage-wise they hold about 30,000 pounds. That is the legal limit.

Q. And am I correct that your testimony is that you don't know whether one or two or even more trucks were used?

A. I don't know how many, whether it all came in one or several shipments. I don't know, Mr. Feldman.

Q. Do you know who made the decision to ship such stereo-type equipment from Peoria to Greater Buffalo?

A. I believe it was Mr. Walter Koessler that made 172 that decision.

Q. Do you know where the stereo-type equipment went, to Buffalo or to Dunkirk?

A. I think some of it came into Buffalo and some of it went into the Dunkirk plant, and some of it is still kicking around that has never been used.

Q. And as far as any of the financial statements of Greater Buffalo are concerned, would any such statements be reflecting the receipt of this equipment?

A. No.

Q. Other than that period of time, did Greater Buffalo Press receive any other machinery or equipment from International?

A. Yes, some press parts were shipped from Wilkes Barre to Buffalo.

Q. When did that take place?

A. I think in 1957 and 1958.

Q. Do you have a list or can you enumerate the particular press parts shipped?

A. Yes, specifically according to my knowledge there were four automatic pasters; there were two Sheridan machines as they are called which are stitching and trimming machines used in the bindery operation and those went into our bindery, and there were four Pancoast couples which came originally out of the Baltimore News plant, and there were four additional Pancoast couples that came out of the Journal American plant.

Q. Is that all, sir?

A. That is all.

Q. Prior to that machinery leaving International, who owned the machines or equipment, Greater Buffalo, or International?

A. International purchased the pasters and there were several transactions on that, Mr. Feldman, that I don't have the details of, but initially the initial purchase was around \$20,000 and we agreed to take two and International wanted two for their use, so we paid them the sum of \$10,000 for our half of the original pasters. Then we also paid them—

Q. Excuse me, before going into other equipment, just concerning ourselves with pasters, now, were they purchased new by International?

A. No, they were used.

Q. Do you know where International purchased them?

A. No, I don't, offhand. I would have to look that up.

Q. Did Greater Buffalo receive them immediately after the purchase or did International hold onto them a while?

A. I think we received them immediately after the purchase, Mr. Feldman.

Q. When you say you think, how soon after; was it a period of a month, two months, a year?

A. I don't know that. I know at the time we paid half of the transportation charge—

Q. Now, when—

A. So I assume that we got the two at the same time that they got the two that they wanted.

Q. Now when payment was made, is it your testimony that International laid out the money and then Greater Buffalo reimbursed them, is that correct?

A. Yes.

Q. And this took place again, sir, when?

75 A. I think 1957, around in there.

Q. Now, going into the next equipment you spoke about—

A. The Sheridan machines?

Q. That is right, sir.

A. International acquired those from the Keystone Magazine plant in Wilkes Barre which was defunct and on our order to purchase them and I think some of those were \$32,750 and we reimbursed International Color Printing for them and those Sheridan Machines were shipped into our bindery and they are in use at the present time.

Q. Was this Sheridan machine shipped to Greater Buffalo at the same time that the automatic pasters?

A. Oh, no.

Q. And was it before the shipment of the automatic pasters?

A. After.

Q. After?

A. Yes.

Q. How long after?

176 A. I think those were shipped into our bindery in 1959 sometime.

Q. Now, how long after the purchase was made did Greater Buffalo get the Sheridan machines?

A. Well, they were bought from this Keystone and moved right in there.

Q. When you say—

A. I don't think they were ever in the plant of International Color Printing.

Q. In other words—

A. They were moved right from this Keystone Magazine Plant into our plant, as I remember.

Q. Do you recall who negotiated the purchase of the machine?

A. I am not sure but I think it was either Mr. Gorman or Mr. Brennan.

Q. Now, thereafter you spoke about some other equipment, the Pancoast couples, is that right?

A. That is right.

Q. And when was that shipped to Greater Buffalo?

A. Oh, I haven't got any information on that, Mr. Feldman.

Q. Well, who paid for that?

177 A. International Color.

Q. And was it much like the previous operation; was it like where they went out and purchased it at Greater Buffalo's direction?

A. Yes, I think that at the time this was sort of a—these Pancoast couples were probably acquired at the same time that International acquired the press—

Q. Acquired what?

A. Acquired the press.

Q. What press?

A. Press 2022 from Baltimore.

Q. When did they acquire that, when would that be, sir, what year?

A. Gee, I think that was 1955.

Q. And how much was involved?

A. These were practically junk. I don't know what they paid for it, maybe \$200, \$500 or a thousand dollars, I don't know what they did pay for them. They didn't amount to much anyway.

Q. Are there any records of them available which would reflect what amount Greater Buffalo—

178 A. No. They were no good to International and I think it was thought maybe we might be able to use them and they shipped them up here. They never billed us for them. I don't know what they cost.

Q. Were they first shipped to International or was shipment made direct to Greater Buffalo?

A. I don't know. I can't answer that.

Q. Going to the next equipment you spoke about, what would that be?

A. It would be about the same situation as the other Pan-coast couples.

Q. And what year was that, sir?

A. Well, that was later, the ones that were acquired from the Journal American. I couldn't tell you exactly.

Q. Well, you testified that the couples acquired from the Journal American were in 1955 and these couples now would have to be after 1955, would you say?

A. I think so. I think it was after.

Q. You think it was after?

A. Yes. Journal American is another newspaper.

179 Q. Now, 1955, I am talking about the press 2022 that you just spoke about.

A. Yes.

Q. And you referred to these couples being bought at the same time when the press 2022 was purchased?

A. I am not certain of that. I am just assuming that, Mr. Feldman.

Q. But you say that after that there were additional couples purchased and they were approximately of the same value of the previous couples?

A. It is hard for me to answer these questions very specifically, Mr. Feldman, because I have very little to do with the machinery end of our business. These things go on. I am just telling you what I think and you are trying to pin me down to a definite time here. I don't want to—

Mr. MOORE: Well, just answer to the best of your recollection.

A. To the best of my recollection they were purchased some time after the couples were purchased from the Baltimore News and they were about in the same category.

180 They were parts of presses that had no particular value and I think Mr. Brennan acquired those and he had a good idea it might be handy to have them around and some day they might fix them up and rebuild them and might be able to use them in some manner and some of these presses we rebuild, re-design and re-construct. We have a lot of machinery kicking around like that.

Q. Going back to the four classifications of machinery and equipment that you just testified about, do you presently have any records at all at Greater Buffalo which would show the purchase of such equipment by Greater Buffalo?

Mr. MOORE: I am not quite clear on that question. You are referring to the pasters and the Sheridan Machines which he has testified to were reimbursed as well as—

Mr. FELDMAN: I am referring to all the machinery, the four classifications.

181 The WITNESS: Yes, we have a specific bill for the Sheridan Machines in the sum of \$32,750.

By Mr. FELDMAN:

Q. And where was that bill from?

A. From International Color Printing.

Q. And do you know the date that bill has on it?

A. No, I don't. I haven't got the bill with me.

Q. Did you examine that bill before coming here to testify?

A. No.

Q. In other words, you just testified now as to memory, is that correct, as to what happened about that time?

A. I looked up our bookkeeping records on this, Mr. Feldman, and this item appears on our books.

Q. All right, now, what other records do you have?

A. What other records do I have?

Q. That's right. That would show the purchases.

A. Our ledger accounts in our asset accounts. If they were purchased, we recorded the purchase in our asset machinery account.

Q. All right. Now, going back to the automatic pasters,
182 the first item you spoke about, did you get a bill in regard to that purchase from International?

A. Initially we got a bill for \$10,000 which we paid. Then, we later got a bill from them for some five thousand odd dollars—I think it was around fifty-five hundred dollars—for our share of the transportation cost of moving them, and then we later received a bill from them for around \$12,000 which was one-third of the cost of converting six of these pasters. Now, International bought eight of them all together and now that is all they billed us for to date, is around \$27,584, and that is what appears on our records.

Q. Now, going to the last two items, namely the two classifications of couples you spoke about —

A. They are not recorded on our books.

Q. In other words, you have no written record of that at all, sir?

A. No, International never billed us for those. There was so little involved they just figured it wasn't worthwhile
183 billing us for them.

Q. But at any rate, Greater Buffalo paid International some amount?

A. For the couples?

Q. Yes.

A. No, we never paid them anything for those. The whole four of them wouldn't be worth a thousand dollars, I don't think.

Q. Is there any other machinery and equipment which Greater Buffalo received from International since June 1955?

A. Not that I have any record of.

Q. Do you know whether or not since June 1955 International has serviced, conditioned, or worked upon any machinery for Greater Buffalo which eventually was shipped to Sylacauga?

A. Yes, they worked on a printing press.

Q. What printing press is that, sir?

A. Well, specifically it is referred to as press 2022.

Q. Who presently owns that press, International or Greater Buffalo?

A. Greater Buffalo Press owns it.

184 Q. Where is the press physically located at the present time?

A. In the plant of Dixie Color Printing Company in Sylacauga, Alabama.

Q. Now, when did Greater Buffalo acquire that press?

A. Well, right from the very beginning.

Q. And when was that, sir?

A. The press was bought originally in 1955 at the direction of the Greater Buffalo Press.

Q. Who gave that direction?

A. Mr. Koessler.

Q. That is the president of Greater Buffalo Press?

A. President of Buffalo Greater Press.

Q. And what happened thereafter? Was the press shipped to Greater Buffalo, or was it shipped to International?

A. It was shipped to International at Wilkes Barre.

Q. What happened thereafter as far as you know in regard to that press?

A. Well, from time to time International spent some time on it. Do you want me to go into detail here?

185 Q. No, not detail, just generally what you know took place.

A. Well, certain parts for the press were machined here at the Burk Tool Works under our orders and direction and it was the idea to reconvert and rebuild this press into something that is not manufactured by any printing press manufacturer, what we call a five-plate wide press. Now, the Greater Buffalo Press designed a press and undertook all the engineering and the knowhow from years of experience that a press of that type would be useful to the Greater Buffalo Press. So, the

Greater Buffalo Press had one built to its own specifications and this press was to be rebuilt in accordance with that design and those working drawings and engineering that was furnished by the Greater Buffalo Press.

Q. Now, where did the personnel come from who worked on that press at International?

A. The personnel were machine—were machinists of the International Color Printing Corporation.

Q. Did personnel from Greater Buffalo Press work on that press at all at International?

186 A. Do you mean physically

Q. Yes?

A. No.

Q. Did Greater Buffalo reimburse International for the work and time put in by such personnel of International?

A. That's right. International was reimbursed by Greater Buffalo Press for all the expenditures on the press.

Q. Do you know when Greater Buffalo actually reimbursed International?

A. In January 1961.

Q. Now, is it your testimony that the press was purchased by International in 1955, worked upon thereafter and payment for the first time was made in January 1961? Is that correct?

A. That's right.

Q. Was this payment made the earlier part of January or the latter part of January?

A. I think it was the latter part of January.

Q. Is there any other equipment that International worked on for Greater Buffalo?

187 A. Any other equipment that International worked on for Greater Buffalo?

Q. That's right, yes.

A. Do you mean that came into Buffalo?

Q. No, that either went to International to begin with or left Greater Buffalo to International but work was put on the equipment on the behalf of Greater Buffalo?

A. I don't know as I understand what he means.

Q. Let me start from the beginning. Outside of this press 2022 was there any other equipment which International purchased for Greater Buffalo and then worked upon the equipment?

A. Not that I know of.

Q. Was there any equipment that you know of which Greater Buffalo, which Greater Buffalo sent directly to International and thereafter work was performed for Greater Buffalo by International?

A. Performed by Greater Buffalo for International?

Q. Well, I will rephrase the question. Do you have a list of any equipment which left Greater Buffalo and went to International?

A. Oh, yes. I didn't bring anything like that along with me though.

188 Q. But you know such equipment did leave?

A. Oh, we had things built here in the Buerk Tool Works here, which plant does most of our machinery work. We would order, oh, maybe six routers. Maybe two or them would be for our Buffalo plant, two of them would be for Dunkirk, and maybe we would have two made for International Color.

Q. Putting that aside for the moment and directing your attention to machinery and equipment which Greater Buffalo went to International and thereafter work was done on such machinery and it was sent back to Greater Buffalo—

A. No.

Q. Or sent to some other subsidiary?

A. They kept it there themselves in their own stereo-type department. They used some of these things that were to our design.

Q. In other words, this was machinery that International—

A. Bought from Greater Buffalo Press.

Q. Yes, I am not interested in that at all.

180 A. I didn't think you were, so I didn't bring anything like that with me.

Q. Is that correct, sir? I am just interested in, and would like to know from you whether there is any other machinery that was sent from Greater Buffalo to International—

A. And then back again?

Q. And then back again?

A. No.

Q. None at all, sir?

A. None that I know of.

Q. Do you know of any machinery that was sent from Greater Buffalo to International and thereafter sent to any other plant or subsidiary of Greater Buffalo?

A. Yes. I think there were a couple of instances like that where we furnished some stereo-type equipment to International and I think there might have been one or two items that were ultimately shipped to Dixie Color in Sylacauga.

Q. Were they shipped originally by Greater Buffalo with the intention of International working upon the same and then reshipping it?

A. No, they were all ready to use, they were completely rebuilt, serviceable. There was no other work required on them when they left here.

190 Q. Now, were they ultimately shipped from International to Sylacauga then at the direction of Greater Buffalo?

A. Yes.

Q. Who gave that direction, sir?

A. Mr. Koessler.

Q. Can you specify or describe what that equipment was?

A. I don't know. I think probably specifically it might be this double ring cutting machine.

Q. Do you know the value?

A. I think originally that was built by us here. We paid for it, shipped it to International, billed them for it, then it ultimately went to Sylacauga and Sylacauga billed it back to the Greater Buffalo Press. I think that is the way the thing went.

Q. Did International pay for it at all at any time?

A. Did they pay for it?

Q. Yes?

191 A. Yes, I think they paid us for it.

Q. Were they reimbursed, International, when it left International?

A. When it left they were reimbursed, yes.

Q. By whom were they reimbursed?

A. The Greater Buffalo Press.

Q. Are there any records which indicate this, that Greater Buffalo reimbursing International?

A. Oh, sure.

Q. Do you know the amount involved?

A. Well, I have got a list of items here. I haven't totaled it up. Do you mean specifically on these items that went to Wilkes Barre?

Q. That's right.

A. I mean that went to Sylacauga?

Q. Via Wilkes Barre?

A. Well, some of these items, Mr. Feldman, were purchased by International Color but shipped directly to Sylacauga from the source. They were new. They never were in the plant of International Color. International Color just acted as a buying agent, let's say, and they bought these items and paid for them and billed the Greater Buffalo Press. Greater Buffalo

192 Press reimbursed International Color.

Q. I am talking specifically about this one item you mentioned, this box.

A. Double ring cutting machine?

Q. That's right.

A. Yes, Greater Buffalo Press reimbursed International for that.

Q. And that was after International had paid for it, is that right?

A. Yes.

Q. And had paid Greater Buffalo, is that right?

A. That's right, yes.

Q. Do you have any records which show that transaction?

A. I think it is on our books.

Q. What books would that be, sir?

A. Our ledger accounts.

Q. Now, are there any other items which were shipped from Greater Buffalo to International and then thereafter shipped by International to Sylacauga?

A. Nothing that I know of.

193 Q. Now, Mr. Hammond, do you prepare the balance sheets and financial statements of Greater Buffalo Press?

A. No.

Q. Are they prepared under your supervision?

A. That's right.

Q. How many people do you have preparing these?

A. Well, we have six.

Q. Where are they located or where do they maintain their offices?

A. Well, let's see. Four of them in the office of the Greater Buffalo Press at 302 Grote Street.

Q. That is here in Buffalo, sir, is that right?

A. Yes. There is one in the bindery.

Q. Where would that be, sir?

A. And there is one in another corporation we own, and there is another one in a partnership that we have.

Q. The other corporation which you own, where is that, sir?

A. The other corporations?

No. You mentioned just one corporation that you own you said.

194 Mr. MOORE: Well now, I am going to interpose and object here that it is far beyond the scope of this examination. If you want to notice his examination generally, you can interrogate him on these. We are directing ourselves to these rather limited items.

Mr. FELDMAN: All I want to know is in connection with the financial statements of Greater Buffalo and these are the answers he gave me. Maybe we do not understand one another.

Mr. MOORE: Please don't answer. I have no objection to your inquiring who prepares them, but I am going to object to any inquiry at this time into any other corporations or any other partnerships or any other interests. We have interests that have nothing to do with the nature of this inquiry at all and we are not going to respond to interrogation on those subjects.

Mr. FELDMAN: My intention is not to go that far.

195 By Mr. FELDMAN:

Q. Let me start it this way, Mr. Hammond: Who prepares the financial statements and balance sheets of Greater Buffalo Press and I am just talking about Greater Buffalo Press now?

A. Mr. William M. O'Connor.

Q. Does he work under your supervision?

A. Yes, he does.

Q. Is there any other person or individual who prepares or works upon the financial statements or balance sheets of Greater Buffalo Press and no other corporation?

A. Well, we have some bookkeepers that handle billing and accounts payable, accounts receivable. They are girls in the office.

Q. Are they employed by Greater Buffalo Press?

A. Yes.

Q. In other words, outside of this one individual who you just mentioned and yourself and these bookkeepers, generally

no other people prepare the financial statements and balance sheets of Greater Buffalo Press?

A. No other persons, no.

196 Q. In your position as treasurer of Greater Buffalo Press do you receive the financial statements and balance sheets of any of the subsidiaries of Greater Buffalo Press?

A. I receive them all.

Q. Referring to the machinery which you just testified about, namely, purchases which International made on behalf of Greater Buffalo Press, were any such purchases reflected in the balance sheets or annual financial statement of Greater Buffalo Press to your knowledge?

Mr. MOORE: Well, I think you have got to say at what time. I mean if you are talking about after they paid for it, it is one thing.

Mr. FELDMAN: I am talking 1955 to the present time, or at least during the years when these purchases were made that you testified about.

Mr. MOORE: Well, I suppose that to clarify that questions there is no reason for them appearing in the balance sheet of Greater Buffalo until Greater Buffalo has paid for them.

197 By Mr. FELDMAN:

Q. Referring now to the balance sheets and financial statements of Greater Buffalo Press, during the years from 1955 to the present time did these items or machines, or equipment appear in any form in such balance sheets or financial statements after such purchases were paid for by Greater Buffalo Press?

A. Yes.

Q. Referring now to press 2022, how was that listed in the financial sheets or balance sheets of Greater Buffalo Press?

A. That would be in our machinery account.

Q. Did that appear in such balance sheet at any time prior to the time when Greater Buffalo paid for the same, namely, January 1961?

A. It appeared on a balance sheet of December 31, 1960.

Q. Do you know how that appeared in the balance sheet of International on the basis of the balance sheets?

198 A. It appeared on their balance sheet as an account receivable against the Greater Buffalo Press.

Q. Mr. Hammond, I show you a balance sheet of International Color Printing Company bearing the date on the top December 1959 and ask you to examine the first page of the same and particularly the item under "other assets".

Mr. MOORE: Will you mark that for identification so we know what we are talking about?

Mr. FELDMAN: I will ask that a balance sheet of International Color Printing Company dated December 1959 and bearing the name on the righthand corner J. J. Gorman be marked as Plaintiff's Number 2 for identification.

(Whereupon the balance sheet of International Color Printing Company dated December 1959 was marked plaintiff exhibit number 2 for identification.)

Mr. MOORE: I want to call attention to the fact that the witness testified about a balance sheet of December 31, 1960, and you are showing him now a balance sheet of December 31, 1959.

Mr. FELDMAN: That is correct, sir.

By Mr. FELDMAN:

Q. I ask, Mr. Hammond, that you examine Plaintiff Exhibit Number 2 for identification and particularly the item on the first page under "other assets".

A. Yes.

Q. Now, I believe you testified a little while back that press 2022 would appear under the title "accounts" from knowledge you received from International, is that correct?

A. As of December 31, 1960 it appeared as an account receivable.

Q. All right. Now, do you know how it appeared on the balance sheet prior to that time?

A. The one you just showed me?

Q. Yes?

A. It appeared under the title of "Other Assets."

Q. Now, referring to the other machinery or equipment which International purchased on behalf of Greater Buffalo, do you know how such items appeared on the balance sheet of International prior to the time that Greater Buffalo reimbursed International?

A. It appears on that particular statement.—

Q. I am talking about other items, whether you know or not?

A. I don't know how it appeared on their statement.

Q. Now, prior to the time that Greater Buffalo reimbursed International for press 2022, did any of the financial statements or balance sheets of Greater Buffalo Press indicate that an amount was due International?

A. Prior to what time?

Q. Prior to the time, prior to January, 1961, when Greater Buffalo reimbursed International?

201 A. Yes, I think they billed us for various other items than this press that appeared on our Accounts Payable.

They billed us for part of this press. I think that appeared on our Accounts Payable prior to January 1, 1961.

Q. In other words, it is your testimony then that it appeared under Accounts Payable, is that correct?

A. On the books of Greater Buffalo Press, yes.

Q. And would that be reflected, as far as you recall, in what type of statement, a balance sheet or financial profit and loss statement?

A. Well, it would be listed—we draw up a monthly list of all our Accounts Payable and that would show on there, under International Color Printing, as an Accounts Payable.

Q. Do you know whether it appeared on any annual statement prepared by Greater Buffalo Press?

A. I am sure it appeared on the statement of December 31st, 1960.

Q. No. I am talking before that time, before the actual reimbursement was made.

A. Specifically this billing for the press?

Q. Yes?

A. I wouldn't know without checking it, Mr. Feldman.

202 Q. In other words, you don't recall at the present time at all?

A. I don't recall, no.

Q. Now, when International purchased press 2022 on behalf of Greater Buffalo, was any note exchanged or any memorandum between the two concerns, indicating that an amount was due International?

A. Other than that they showed it on their statement. You mean, did they bill us for the original \$32,000.00?

Q. No. Did Greater Buffalo give them a memorandum or a statement stating that they are indebted or in some way obligated to pay for this machine, and that the machine had been purchased for Greater Buffalo?

A. No, we don't do things that formally.

Q. In other words, you don't know whether—

A. These were instructions given by Mr. Koessler to buy the machine. It was the intent and purpose from the beginning that it was for the Greater Buffalo Press and there wasn't a contract, drawing on it, or a statement. It was just verbal instructions, "Go and buy the press."

Q. And is this a normal type of operation as far as
203 Greater Buffalo Press is concerned?

A. That is right. Now, I would like to clear this up—

Mr. MOORE: All right. Leave it alone. I will take care of it.

Mr. FELDMAN: Your counsel will examine you after.

The WITNESS: All right.

By Mr. FELDMAN:

Q. All right, now going on to newspaper accounts and runs presently serviced by Greater Buffalo, do you know whether Greater Buffalo Press, since June, 1955, has ever printed for newspapers colored comic supplements which prior to that time, were printed by International?

A. Yes.

Q. Do you have a list or can you recall the names of such runs?.

A. I have a list.

Q. All right, will you read your list, sir?

A. Yes. These are the accounts, there are quite a few of them.

Mr. MOORE: Read them slowly and the reporter will
204 take them.

By The WITNESS:

A. Amarillo, Cedar Rapids, Erie Times; Gary, Indiana; Joplin, Missouri; Davenport, Iowa; Lubbock, Texas; Madison, Wisconsin; Rapid City—I don't even know where that is; Peoria, Illinois; Rockford, Illinois; Springfield, Illinois; Springfield, Missouri; Springfield, Ohio; St. Joseph, Missouri; Toledo, Ohio; Youngstown, Ohio; Danville, Illinois; Lewiston, Idaho; Champaign, Illinois; Casper, Wyoming; Colorado Springs—I assume that is in Colorado; Aberdeen, South Dakota; Grand Forks, North Dakota; Great Falls, Montana; Fort Wayne, Indiana;—that is out.

Q. You say out?

A. There was one listed here in error. Cross that off. The Houston Post; Monroe, Louisiana; Topeka, Kansas; Tulsa, Oklahoma; Wichita, Eagle; Wichita Falls; Abilene; Big Spring;

Corpus Christi; Denison; Greenville; Marshall; Paris, Texas; San Angelo; Santa Fe, New Mexico; Tyler, Texas; Austin; Port Arthur; Waco; Hutchinson; Salina; Shreveport, 205 Louisiana.

Q. Now, those were runs which you just enumerated. Now, do you know whether or not Greater Buffalo Press presently prints for those newspaper accounts color comic supplements?

A. Yes.

Q. Are there any which they do not print for at the present time?

A. No.

Q. Mr. Hammond, as an officer of Greater Buffalo Press, have you within the last two years participated in or been consulted as to any negotiations between Greater Buffalo and any other person or corporation relating to the sale, lease or transfer of International Company's stock?

A. No.

Q. Have you received any information that such negotiations ever took place within the last two years by anyone on behalf of Greater Buffalo, in regard to the sale of International stock?

A. Not to my knowledge.

Mr. FELDMAN: Let's take a break.

(Short recess taken.)

206 Q. Mr. FELDMAN: Will the reporter please read back the last question and answer?

(Last question and answer read.)

By Mr. FELDMAN:

Q. Is Mr. Joe Clinton presently on the payroll of Greater Buffalo?

A. No. He is on the payroll of Dixie Color.

Q. Was he ever on the payroll of Greater Buffalo Press?

A. No.

Q. To your knowledge, did Mr. Clinton ever receive any reimbursement or any salary from Greater Buffalo Press?

A. No.

Q. Do you know whether or not International ever received any reimbursement or salary for services rendered by Mr. Joe Clinton?

A. No.

Mr. FELDMAN: I have no further questions at this time.

EXAMINATION

By Mr. MOORE:

207 Q. Now, Mr. Hammond, when did you first receive any bills for the Press and the work done on the press from International Color Printing?

A. I think it was in July, 1960.

Q. And then from July, 1960 —

Mr. FELDMAN: Excuse me, are you talking about one particular press now?

Mr. MOORE: Press 2022.

Mr. FELDMAN: All right.

By Mr. MOORE:

Q. And then from July, 1960, did you receive a series of bills?

A. Every month.

Q. And when was the work at Wilkes-Barre on this press, concluded, about?

A. About June, I think, of 1960.

Mr. FELDMAN: June, 1960, is that, sir?

The WITNESS: That is right.

By Mr. MOORE:

Q. And thereafter or at or about that time, the press
208 was shipped down to Sylacauga?

A. That is right.

Q. And then for the first time, International billed you for the work done and for the cost of the press?

A. Yes.

Q. And those bills were finally paid in January of this year?

A. That is right.

Q. Now, I notice on plaintiff's Exhibit Number 2 for identification, the balance sheet of International Color Printing, as of January 2nd, 1960, that they have under Fixed Assets, a machinery account, is that correct?

A. That is right.

Q. Totaling approximately one million-three?

A. That is right.

Q. Then they have under the Fixed Assets column, another line, "Other Assets," press 2022, is that right?

A. That is right.

Q. And also under that heading they have an item, "Key-
stone Magazine Material, \$32,750.00?"

A. That is right.

209 Q. Do you know what that Keystone Magazine Material asset refers to?

A. Yes, they are what we call hole stitching and printing machines that are used in our bindery operation. They have no relation to printing.

Q. Are those the Sheridan machines?

A. The Sheridan machines, that is right.

Q. That you referred to in your testimony earlier?

A. Previously, yes, sir.

Q. And I think you testified that those were sent to your plant?

A. To our bindery.

Q. To your bindery?

A. Yes.

Q. And they were bought by International and you paid International for them?

A. That is right.

Q. Now, these Sheridan machines are not used at all in newspaper color comic supplement printing, are they?

A. Not at all.

Q. And they were never in the International plant, as a matter of fact, were they?

210 A. They were never in there, to my knowledge.

Q. Now, during the course of the time that the work was being performed on this press 2022 at Wilkes-Barre, did Greater Buffalo send parts to Wilkes-Barre for incorporation in that press?

A. Yes.

Q. And did Greater Buffalo pay for those parts themselves?

A. Yes.

Q. And those parts were never billed—

A. Never billed to International.

Q. So that in addition to the reimbursement item that you have paid International, Greater Buffalo had, in addition to that, a substantial investment in the press in the shape of parts that went into it?

A. Yes.

Q. And what about plans and designs, were they sent down there by Greater Buffalo?

A. Yes, all the working drawings were furnished by Greater Buffalo.

Q. And Greater Buffalo Press stood the cost of all those working drawings?

211 A. Oh, yes.

Q. Now, there was some confusion here about a double wing cutting machine that was sent from Wilkes-Barre to Sylacauga. Now, do you recall that transaction, about that?

A. Yes. We had several of them built, I couldn't tell you how many, for our own use and use in our Lufkin plant, and our Dunkirk plant and at the same time we were having these built by Buerk Tool Works, we had this one built for International Color Printing.

Q. And was it shipped to International Color Printing?

A. Yes, it was.

Q. For their own use?

A. For their own use.

Q. Then what happened when it got there? Now, first of all, it was shipped there and did you bill them for it?

A. We billed them for it.

Q. Did they pay the bill?

A. They paid it.

Q. All right, then what happened to the machine?

212 A. They decided they didn't need it, and under directions from Mr. Koessler, it was shipped to Sylacauga.

Q. And since it was shipped to Sylacauga, you then paid them back for it?

A. International billed us and we paid them back.

Q. Now, in addition to the moneys that Greater Buffalo has expended on this press, both directly and through reimbursement of International, what other moneys has Greater Buffalo spent on the Sylacauga plant?

A. Well, up to the present moment, I may be off a little bit, but to make it in round figures, let us say in the neighborhood of \$800,000.00.

Q. And what were those expenditures—

A. Did you say in addition to the press, Jim?

Q. Yes?

A. Oh, in addition to the press, I would say the press and other things that were reimbursed to I.C.P., I would say probably \$600,000.00, so that we have a total investment in the Sylacauga plant at the moment, of about \$800,000.00 total.

Q. And of that investment, \$600,000.00 was spent directly by Greater Buffalo, with no connection at all with International at all?

A. It had nothing to do with International, no.

Q. Now, what were those expenditures made for?

A. Well, the largest amount went into the building, I would say around \$400,000.00 went into the building, and a couple hundred thousand was machinery.

Q. Do you know who owns the property at Sylacauga, where the title is?

A. The title of the property is in the name of Greater Buffalo Press.

Q. And when did we take title to that property, or when did Greater Buffalo Press take title to it?

A. I think it was deeded to us in 1956.

Q. Now, this equipment that was shipped from time to time, or the equipment you testified to that came from Peoria, the plant in Peoria, which was shut down, you testified that that does not appear on your books as having any value?

A. No, it doesn't appear on our books.

Q. And at the time, that equipment was acquired, was it considered largely junk?

A. It was largely junk. It was machinery that was 214 obsolete; it was worn out; it had been in service over twenty years and had no value. It was completely written off, fully depreciated, and had no book value.

Q. Now, when any of that equipment is used in the rebuilding of a machine or rebuilding other equipment, at that point the rebuilt machine is then capitalized, is it not?

A. That is the way we do it.

215 Q. So that at that point if the equipment is ever used, it then does appear on the books in the form of a part of a new capital item?

A. What will they do with a piece of machinery, we will send it to a machine shop like Buerk Tool Works, and we will tell them how we want it rebuilt. They will buy the necessary parts, new bearings, motors, wiring, and what have you. They will do certain machine work. They will modify it; they will improve it; they will bring it up to our modern day standards of the type of machinery that we use, and we carry those on as project accounts. When the project is completed, we capitalize the sum total of all of the improvements. Now, just—

Q. That is all I want to know on that. Turning now to a different subject, are you familiar with the criterion or standards used in the newspaper industry for measuring the volume of business in the industry?

A. Yes. It is circulations.

Q. And those circulation figures, do they become a matter of public record?

216 A. Yes, they do.

Q. How are they recorded or where are they recorded?

A. Well, initially there is an organization called the audit bureau of circulations, which audits the circulations of all the newspapers in the country, and those figures are compiled in a publication known "Editor and Publisher".

Q. And those figures are then made available to the public?

A. Anyone who is interested can get a copy of it and the "Editor and Publisher Year Book" is considered the bible of the newspaper publishing industry.

Q. Did you make a study and a computation of the circulation of the various papers for whom Greater Buffalo Press does printing and make a comparison between the year 1954 and the year 1960?

A. I did.

Q. Do you have a computation on that before you?

A. I have got one in my folder here.

217 Q. Now, in the year 1954 from the records of Greater Buffalo Press and the figures from "Editor and Publisher" what was the annual circulation of the newspapers for whom Greater Buffalo Press printed colored comic supplements?

A. Circulation figures you want?

Q. Circulation figures.

A. 8,993,170.

Q. What was the total circulation figure that year of all newspapers which carried colored comic supplements?

A. 46,331,370.

Q. What percentage of the circulation, total circulation of newspapers carrying color comic supplements was printed by Greater Buffalo Press?

A. Ninety and forty one hundredths percent.

Q. Now, during the same year, what was the circulation of the newspapers for whom King Features had contracts for the printing of colored comic supplements?

A. Twenty-three and thirty one hundredths percent. That was the percentage of total circulation.

Q. What was the amount of circulation?

A. The amount was 10,799,474.

218 Q. Now, will you give the same computation for N.E.A.?

A. N.E.A. percentage-wise was 4.28 and circulation-wise it was 1,983,746.

Q. What was the percentage held by other printers of colored comic supplements?

A. Nine and seven one hundredths percent, total circulation of 4,203,656.

Q. And what percentage of colored comic supplements were printed in the newspaper plants? By that I mean the plants—

A. Private plants? Private plants of newspapers?

Q. Private Plants of newspapers?

A. Forty three and ninety three one hundredths percent.

Q. And the circulation of those papers?

A. Was 20,351,324.

Q. So, if you use the circulation figures in the year 1954 Greater Buffalo Press had 19.41 of the market, is that right?

A. That's right.

Q. Did you make the same computation for the year 1960?

A. I did.

219 Q. Give us the circulation and the percentage of Greater Buffalo Press?

A. Greater Buffalo Press held twenty six and twenty eight one hundredths percent, a total circulation of 12,453,371.

Q. King?

A. Twenty and ninety-six one hundredths percent, a total circulation of 9,929,613.

Q. N. E. A.?

A. Four and seventy-eight one hundredths percent, 2,264. 651.

Q. Other printers of colored comic supplements?

A. Eleven and forty-seven one hundredths percent, 5,433. 786.

Q. And—

A. Private plants of newspapers?

Q. Private plants of newspapers.

A. Thirty-six and fifty one hundredths percent, 17,300,660.

Q. What was the total circulation for 1960?

A. 47,382,081.

Q. Now, did you compute the percentage gain enjoyed by Greater Buffalo Press from the year 1954 to 1960?

220 A. Yes, I did.

Q. What was that percentage gain?

A. The percentage gain was six and eighty-seven hundredths percent.

Q. What was the gain circulation-wise?

A. 3,460,201.

Q. What about King?

A. King had a loss of two and thirty-five hundredths percent.

Q. What circulation?

A. A circulation of 869,861.

Q. And N. E. A.?

A. Had a plus of a half of one percent, point five zero percent.

Q. Gain in circulation?

A. 280,905.

Q. Other printers of colored comic supplements?

A. There was a gain there of two and forty hundredths percent, a circulation of 1,230,130.

Q. And the newspaper plants printing their own supplements?

221 A. There was a loss of seven and forty-two hundredths percent, involving 3,050,664.

Q. Now, did you make a computation as to the source of the increase of Greater Buffalo Press business from 1954 to 1960?

A. Yes, I did.

Q. Will you tell us where that increase came from?

A. Well, Greater Buffalo Press gained a net of twelve accounts from King Features, totaling a circulation of 603,498.

Q. Did they gain any accounts from N. E. A.?

A. Yes.

Q. What was that?

A. 529,820, the two accounts.

Q. We gained two accounts from N. E. A. and lost two, didn't we?

A. That's right. So, in numbers of papers we wound out even, but we came out on top on the circulation.

Q. And King, we took thirteen accounts?

A. And lost one to them.

Q. Lost one, so we had a net gain on King of twelve?

222 A. That's right.

Q. What about other plants?

A. Other plants?

Q. These are other colored comic supplement printers.

A. There were eight jobs involving 221,082 in circulation.

Q. What about runs that we acquired that had formerly been printed by the newspaper plants themselves?

A. We acquired eight new jobs, or seven with a total circulation of 1,826,684.

Q. Now, at the time we acquired those jobs the work was being performed by the newspaper publisher himself?

A. That's right.

Q. Those jobs were not acquired from any other printer?

A. They were not acquired from any other printer.

Q. Or any other syndicate?

A. Or from any other syndicate.

Q. Then, did we gain circulation or gain in production because of any circulation increases?

223 A. Well, there are two new publications that never had a Sunday comic supplement before.

Q. And what did we gain on that?

A. We gained two jobs, a total circulation of 318,514, that was never in any other commercial plant.

Q. Now, were some papers discontinued?

A. Yes. We gained a sum in our normal circulation increases. Do you want that figure, Mr. Moore?

Q. Yes.

A. From the existing newspaper accounts that we had been printing for right along the gain was 266,532 in circulations, and to answer your last question, there were two newspapers that were discontinued involving a loss in circulation of 305,930.

Q. So, of the 6.8 gain in volume enjoyed by Greater Buffalo from 1954 to 1960, 1,826,000 was from newspapers that had previously printed their own supplements?

A. That's right.

Q. And 318,000 some odd were from newspapers that hadn't had any supplements?

224 A. That's right.

Q. And only 221,000 was from other competitive colored comic supplement printers excluding King and N. E. A.?

A. Excluding King and N. E. A., yes. Do you want this figure, Jim? I think that is an interesting one.

Q. Now, the analysis of the business of Greater Buffalo Press as of December 31, 1960 discloses how many papers? How many papers did we print for?

A. 79, total circulation of 12,453,370.

Q. Where did we get that business from, or who had that business previously?

A. Previously fifty-one of those newspapers, representing a total of 9,459,936 in circulation and representing seventy-five and ninety-seven one hundredths percent of our business, came from private plants and new publications that were never previously printed by a commercial comic printer or any syndicate.

Q. And where did the other twenty-eight come from?

A. The twenty-eight came from King, N. E. A. and 225 other plants, representing 2,993,434 in circulation and twenty-four and three one hundredths percent of our total volume of business.

Q. Now, calling to your attention page 3 and 4 of the affidavit of Raymond M. Carlson in support of the order to show cause, have you read this analysis in this affidavit?

A. Yes, I have.

Q. The affidavit states, "These surveys have been characterized as the only available accurate summary of colored comic supplements printed during the specific years." Do you agree with that statement?

A. I do not.

Q. Will you point out wherein that statement does not conform to the practice of the industry?

A. This survey or these surveys that are shown here in Mr. Carlson's affidavit were prepared by Joseph J. Gorman and the method he used was sending in inquiries to all the newspapers throughout the country and asking for replies as to their circulation and where their jobs were being printed. He 226 converts that into—where this is not a criterion in where it is unreliable in the area of arriving at these figures which he converts into terms of four-page units. That is a highly flexible, very unreliable, and it is fraught with nothing but guess work.

Q. Well, for what reason?

A. For the reason that newspapers constantly change the number of pages in their supplements and no one would be able to—I am sure that this survey didn't encompass a report from any of these newspapers as to what number of times they printed an 8-page supplement, a 10-page, a 12-page, a 14-page, a 16-page, an 18-page or what have you. So that he can only guess. When he got the circulation figure he could only guess what size sections they were printing and then by some gymnastics convert that into four-page units. Now, I am sure that there was an awful lot of guess work involved in that procedure.

Q. Turning to another subject, I call your attention
227 to the top of page 3 of Mr. Carlson's affidavit, the first sentence that approximately 14 percent of the total number of these newspapers distributing color comic supplements with their Saturday and Sunday additions printed such supplements themselves? Did you make an analysis of that figure?

A. I think what he is referring to there is the number of newspapers.

Q. In other words, he is referring to the number of newspapers?

A. Rather than the circulation of newspapers.
228 Q. In other words, he is referring to the number of newspapers.

A. The circulation of newspapers.

Q. And, of course, the number of newspapers at Rocky Mountain—

A. Well, for instance here, you take in 1960, N.E.A. had 119 newspapers out of a total of 552—no, 131—wait a minute—119 out of 552. It only represented twenty-one percent of the market in number—it represented twenty-one percent of the market in the number of publications. But in terms of circulation, it represented only 4.78 percent, so you can see how cock-eyed that is.

Q. In other words, if you take a percentage of the number of newspapers to ...ake a comparison, you are giving—

A. A different percentage figure.

Q. The same weight to LaCross, Wisconsin?

A. All the little guys don't mean anything, you throw them in one pot and you couldn't run a printing plant with the whole

bunch of them. There is one other thing here, in this 86 percent figure, he throws into our pot, that doesn't belong to us.

229 Q. Will you explain?

A. Now, International Color Print owns no contracts and when we acquired International Color Print, we acquired no printing contracts.

Q. Those contracts were King's contracts?

A. They were King's contracts and not ours. International never had them and we never acquired them as the result of acquiring International Color.

Q. So in arriving at 86 percent, he includes—

A. He includes something not ours.

Q. In Greater Buffalo, contracts that were not King's?

A. That is right.

Q. Turning now to a different subject, are you familiar with the basis on which Greater Buffalo sells its printing?

A. Yes.

Q. And will you explain to us first of all, are all of its prices to all of its customers, arrived at pursuant to the same formula?

A. We have a standard basic formula.

Q. And what is that formula predicated on?

A. Well, to start with, you have in the trade, what is known as make ready cost. Now, that is the cost of preparing a job through all its stages up to the point of actually starting printing it on the press, mainly, its stereotyping operations. Now, regardless of the number of copies involved, on a given job, the make ready cost on a given size section, eight pages, ten pages and so forth, remains constant, so that if you had a newspaper with a circulation of 100,000 and they were buying an eight-page standard, the cost of preparing that job for printing would be \$2.32, under our pricing formula. Now, obviously, if the newspaper only had a circulation of 50,000, that cost would be in terms of per thousand—let me retract that just a minute there—in terms of a newspaper with 100,000, we were first of all, speaking about that make ready cost per thousand, which would reflect as a cost \$2.32 per thousand.

Q. All right, do you have a cost for paper, too, in the formula?

A. Yes. On an eight-page standard, the paper content and our price would be \$6.62.

Q. Per thousand?

231 A. Per thousand.

Q. And do you have a cost for ink?

A. The cost for ink on that size section would be 88 cents
 Q. And do you have a press cost?

A. Yes.

Q. What is that?

A. The press cost on that size section would be \$2.32.

Q. What does that cost encompass?

A. That is just the printing operation.

Q. That is the labor printing?

A. The labor printing on the press.

Q. Then do you have a handling cost?

A. We have a handling cost. We designate it as wrapping and shipping and on that size section, that cost us 34 cents.

Q. So that when you total up these figures on an eight-page standard section —

A. Of a circulation of 100,000.

Q. You get a figure —

A. The first thousand would be sold at the rate of \$12.48 per thousand.

Q. Now, is there —

232 A. As the run goes up above 100,000, we delete the initial make ready cost of \$2.32 and we sell all the additional thousands at \$10.16 per thousand.

Q. Now, these prices are the standard prices given to anybody who wants to purchase printing from Greater Buffalo Press?

A. We will even sell you some at that price.

Q. And is that the price you charge syndicates?

A. Syndicates.

Q. Newspapers?

A. Newspapers.

Q. Other printers?

A. Other printers.

Q. Well now, how does the formula vary if you have a 50,000 circulation?

A. Well, on the first 50,000, the planning and make ready cost job obviously would become \$4.64.

Q. That is the only difference?

A. And then you would get a total price on the first 50,000 of \$14.80, and then you would take off \$4.64, and you would come back to the basis of \$10.16 for all the additional thousands over fifty.

Q. And that is the only variation in volume?

233 A. That is the only variation in volume.

Q. Now, do you have contracts, enter into contracts, when you take on a printing job?

A. Initially, in most instances, we do, yes.

Q. And are those contracts subject to cancellation?

A. They are.

Q. And on how many days notice?

A. Sixty days.

Q. And is substantially all of the business that you now have, subject to sixty day cancellation?

A. Yes, it is.

Q. Now, do you have some variables in the contracts with respect to labor and paper cost?

A. I don't know as I understand you.

Q. Well, if there is an increase in the cost of newsprint?

A. Oh, Yes.

Q. Is there a provision in the contract that the cost of printing escalates?

A. There is a provision in all our contracts that provides for an automatic increase to cover the exact cost of the paper increase.

Q. And when newsprint increases, that paper item of
234 your job increases?

A. Yes.

Q. Now, do you have a similar provision as to labor increases?

A. Yes, we do.

Q. And over the past ten years, have you had innumerable labor increases?

A. Every year.

Q. And over the past ten years, have those increases in labor been passed on to your customers each year?

A. No.

Q. How many times has it been passed on?

A. Three times.

Q. And when were those increases passed on?

A. In 1952—can I qualify that a little bit?

Q. Go ahead.

A. In 1952 we made an increase to cover our increased cost of labor and in the same year, we converted our machinery to

reduce the size of the comics and reduced the amount of paper required to print these comic sections. In other words, at that time, we were using sixty-inch rolls. We spent a great sum of money—could I mention that?

235 Q. Just say what you want.

A. Well, I think probably a couple of hundred thousand dollars that we spent to convert our machinery to 58-inch rolls and we passed the savings on to the newspapers in a form of a decrease in the price to cover the saving of newsprint, so that in 1952, the net result to us was just about a stand-off.

Q. Then, you had another increase in 1956?

A. In 1956 we had an increase.

Q. And that increase took into account solely increases in labor?

A. Solely increases in labor, yes.

Q. And what about 1958?

A. 1958 we also made an increase to cover the increased cost of labor for that particular year.

Q. Now, did those increases cover your entire increases in your cost of labor up to 1958?

A. Oh, no.

Q. In other words, the 1956 and 1958 increases were predicated just on that year?

A. Yes.

Q. And have you had increases in labor since 1958?

236 A. Yes, we have.

Q. And have you changed your prices to reflect those?

A. No.

Q. Now, beginning in 1950 and up to the present time, what has been your increase in your labor cost?

A. Well, labor cost at that time in 1950, was \$2.73 per hour.

Q. What is it today?

A. \$4.22.

Q. And what is the percentage increase?

A. The percentage increase is 54.6 percent. The dollar increase was \$1.49.

Q. And how much of that have you absorbed?

A. We have absorbed \$1.12 out of \$1.49, and passed on 37 cents in increased prices.

Q. To your customers?

A. To our customers.

Q. So you absorbed about 75 percent?

A. We absorbed about 75 percent and passed on about 25 percent.

Q. Now, have you made a computation showing the cost of services rendered by Greater Buffalo to its customers in the year, 1960, compared to their cost to their customers in 237 the year, 1940, taking into account the relative purchasing power of the dollar in 1940, and the purchasing power of the dollar in 1960?

A. Well, we used the measure there of the years, 1947 to 1949, rather than 1940.

Q. All right.

A. The purchasing power of the dollar then was rated at 100.

Q. Those are from Department of Commerce figures?

A. Those are from the statistical abstracts of the United States for 1960, United States Department of Commerce, Bureau of Labor Statistics, Table Number 432 on page 331.

Q. All right. Now, what was the result of that comparison? Just give us the—

A. Well, the comparison there, the 1960 dollar in terms of the 1940 dollars, is 42.7 percent. Oh, I might say here, the year 1940, in relation to 1947-1949, was 195.7 percent; the period, 1947-1949 was rated at a hundred, and the year 1960 was rated at 83.7 percent of that basic dollar, so that the 1960 238 dollar in terms of 1940 dollars, was 42.7 of the 1940 dollar.

Q. Now, your prices for the year 1940, average what?

A. \$3.19 a thousand.

Q. What do they average in 1960?

A. \$4.98.

Q. And adjusting this to the differential in the purchasing price of the dollar, what would be the respective prices in 1940 and 1960?

A. Well, it would be \$2.13.

Q. For the year 1940?

A. For the year 1940, \$3.19.

Q. And for the year 1960?

A. \$2.13.

Q. So that if you take into account the purchasing power of the dollar, your prices are—

A. \$1.06 less than they were in 1940.

Q. Approximately one-third less?

A. Thirty-three and two-tenths per cent.

Mr. MOORE: I think that is all.

Mr. FELDMAN: Before we recess, may I look at this tabulation?

239 **Mr. MOORE:** Oh, sure, you sure may. I will mark it
Mr. FELDMAN: Will you please mark it?

(Tabulation marked defendant's Exhibit A for identification.)

By Mr. MOORE:

Q. I show you defendant's Exhibit A for identification and ask you if that is the summary of the computation you made from the records of Editors and Publishers?

A. It is.

Q. And the records of the Greater Buffalo Press?

A. It is.

By Mr. FELDMAN:

Q. Referring now to defendant's Exhibit A and to the computations, and summary appearing thereon, what source did you use? Will you repeat that?

A. I used the Yearbook of Editors and Publishers for those respective years.

Q. Is that all you used? Anything else?

A. I used our own records of where these jobs were printed.

Q. When you say records, you mean Greater Buffalo 240 records?

A. Greater Buffalo, International Color.

Q. Any other company?

A. Yes, what our knowledge was of where these other jobs were being printed and we have knowledge of the jobs that are being printed in private plants.

Q. When you say knowledge, how did you acquire such knowledge; was it on paper; did you talk to people?

A. No.

Q. I mean, this is just general knowledge you acquired during the years, is that correct?

A. Yes.

Q. So, in other words, there were three sources you speak about; one, Editors and Publishers Yearbook, record of Greater Buffalo and International, and general knowledge you acquired through the years?

A. Yes.

Q. Is that knowledge you, yourself, acquired, or did you rely upon the knowledge that others at Greater Buffalo acquired?

241 A. I had some assistance on this. One of our men in our office and also Jack Koessler and I consulted with Joe Gorman as to some of these sources where some of these jobs were being printed from common knowledge that everybody knows; there are no secrets about where these jobs are being printed.

Q. Were there any other sources you relied upon?

A. No.

Q. Did you consult the records of any of the other subsidiaries or any other affiliates of Greater Buffalo, outside of International?

A. Yes, I did.

Q. Which ones were they?

A. They are all in our office, Mr. Feldman.

Q. Which ones are they? I just want to know which ones you looked at.

A. Well, the jobs are printed on our run sheets at Dunkirk, at the Dunkirk plant and the Lufkin, Texas plant.

Q. Any other records or sheets you looked at from any other—

A. Yes, jobs that were being printed, record run sheets of International Color Printing.

Q. Any other ones?

A. No, that is all.

242 Q. So, just to review this, you used the Yearbook of the Editors and Publishers, is that correct?

A. Yes.

Q. You used the records relating to runs of newspaper accounts of International Color Printing Company, is that right?

A. Yes.

Q. Also, Southwest Color Printing Corporation?

A. Yes.

Q. Greater Buffalo Press, Incorporated?

A. Yes.

Q. And then you had discussions with Jack Koessler and Joseph Gorman?

A. And Robert Doyle, who is in our office, who is familiar with it.

Q. What position does he hold with Greater Buffalo?

A. He is our newsprint supervisor, supervising most of the billing operations.

Q. In the preparation of this summary, did you consult with any publishers at all, directly?

A. No.

Mr. FELDMAN: I would like to take a recess until this afternoon, at this point. Suppose we get back about 2:30.

243 Mr. MOORE: Yes.

(Thereupon, at 12:20 p.m., a recess was taken until 2:30 p.m.)

244 (AFTERNOON SESSION, 2:30 P.M.)

Mr. FELDMAN: For the purpose of the record, I would like to make this statement: That the plaintiff pursuant to Rule 32 of the Federal Rules of Civil Practice, serves notice that it objects to all questions posed to the witness on cross examination by counsel as to the applicable market relating to the sale of color comic supplements and as to all questions based upon defendant's Exhibit A for identification, which was marked as a defendant's exhibit prior to the lunch recess. Plaintiff also serves notice it objects to all questions asked of the witness as to the method used in pricing color comic supplements by Greater Buffalo Press.

These objections are based upon the fact that such lines of questions are not relevant nor material to the five specific matters set forth in the Order to Show Cause, dated April 3, 1961, on page 4.

Mr. MOORE: I would reply to that that, first of all, these objections are not timely. They should have been made at the time the evidence was adduced. Secondly, that the matters inquired into are distinctly relevant to the subject matter of the Order to Show Cause, in that they directly contradict allegations and affidavits upon which the Order to Show Cause was obtained.

WILLIAM HAMMOND, having been previously sworn, was recalled and resumed his testimony as follows:

By Mr. FELDMAN:

Q. Prior to the recess, Mr. Hammond, I believe you testified—

246 Mr. MOORE: Let me just interject here. Are you now going to cross examine him on these matters?

Mr. FELDMAN: On some of the matters, yes.

Mr. MOORE: Then I am going to claim that you then waive whatever objection you made.

Mr. FELDMAN: Let the record indicate that the plaintiff does not maintain that it has waived any rights under Rule 32-c of the Rules of Civil Practice, since any objections as to relevancy and materiality are not waived even though objections may not be made at the time of the deposition.

Mr. MOORE: Well, I certainly would concede your right to reserve those rulings, but as far as an objection of this deposition going into the scope of the matters examined into, then I would take the position that if you cross examine on it, you waive it.

Mr. FELDMAN: I maintain otherwise. Let the record 247 indicate the views set forth by both counsel.

By Mr. FELDMAN:

Q. Mr. Hammond, prior to the lunch recess, do you recall testifying at length in regard to data you set forth or compiled for the defendant's Exhibit A for identification?

A. Yes.

Q. Mr. Hammond, I believe you stated that one of the source materials you used in compiling defendant's Exhibit A for identification, was data obtained from "Editors and Publishers Yearbook," is that correct, sir?

A. That is correct.

Q. Now, in regard to the information you obtained from "Editors and Publishers Yearbook," did you obtain any data from "Editors and Publishers Yearbook," as to the newspapers throughout the country who sell color comic supplements?

A. Who sell color—

Q. Color comic supplements?

A. Did I obtain any information? I didn't get that.

248 Mr. FELDMAN: I will re-phrase the question.

Mr. MOORE: Let me see if I can clarify it. I think what he is inquiring into is who furnished color comic supplements with the papers they sell.

Mr. FELDMAN: That is what I mean.

By Mr. FELDMAN:

Q. Did you obtain such information?

A. Yes. That is indicated in "Editors and Publishers Yearbook."

Q. What is indicated in it?

A. As publishing a Sunday section.

Q. Does it indicate whether or not color comic supplements are sold by any newspapers?

A. No, not in every instance, no.

Q. Does it indicate it in any instance at all?

A. I don't know.

Q. Isn't it a fact, Mr. Hammond, that "Editor and Publisher" sets forth the circulation of newspapers throughout the United States?

A. And it indicates whether they publish a Sunday—

249 Q. Edition?

A. Edition.

Q. Isn't it a fact also that newspapers throughout the country, at least some of them, do not sell a color comic supplement with their Sunday editions?

A. That is correct.

Q. Isn't it a fact also that some newspapers which are published on Saturday, do not sell a Saturday color comic supplement with said sales?

A. That is correct.

Q. Well, what specifically do you recall "Editor and Publisher," setting forth, with regard to the information you used in compiling defendant's Exhibit A for identification?

A. Well, in every instance where it was indicated in "Editor and Publisher," that they published a comic supplement—I mean, a Sunday newspaper, in those instances where we knew and I knew from knowledge, information and records, that they also published a comic supplement. There were some instances in there where I didn't know whether they published Sunday comic supplements or not.

Q. But at no place in "Editor and Publisher"—

250 A. It is not a matter of record in there whether they publish Sunday comic supplements, no.

Q. Isn't it a fact that all they set forth there are the circulations?

A. The circulation and whether they publish morning, evening, Sunday or Saturday, or what have you.

Q. And that is all that is set forth there?

A. That is all that is set forth there.

Q. In regard to the total number of newspapers in the United States which sell color comic supplements with their Saturday or Sunday editions, outside of contacting the newspaper

themselves, what other methods are available to ascertain whether a newspaper sells a color comic supplement?

Mr. MOORE: I am going to object to the form of the question. It calls for a conclusion. I will allow the witness to answer. It is obviously speculative, what other methods. I suppose that you could hire detectives to go out and do it, but I don't care if he answers it or not.

The WITNESS: Do you want me to answer?

251 Mr. FELDMAN: Yes.

By the WITNESS:

A. What other methods are there of ascertaining of whether they publish a comic supplement or not?

Q. That's right. Based upon your experience.

A. Well, the methods that I used, were our own records in many instances and I think out of this total of 500 here, we had access to information on 52 in our own instance, 145 of King Features and 61 of N.E.A., and those that are printed in our plants, we know that from knowledge. Now, in the instance of the newspapers that we have categorically shown as other plants, that is based on information that is common knowledge in the industry.

Q. All right. Now, would such common knowledge be as accurate as communicating directly with all newspapers throughout the country?

Mr. MOORE: To that, I object. It calls for a conclusion.

Mr. FELDMAN: The witness has testified he is an expert.

252 Mr. MOORE: I am objecting to the form of your question. It calls for a conclusion. I am required to object under the rules. I am going to move to exclude it, which I will.

Mr. FELDMAN: May I have the question?

(Whereupon the last question was read by the reporter.)

Mr. MOORE: I am not only going to object to the form, I am going to direct him not to answer that question.

By Mr. FELDMAN:

Q. Did you, at any time in making this survey, communicate directly with newspapers throughout the country?

A. No.

Q. Did you communicate with any single newspaper at all? Rather than all of them?

A. No.

Q. When you say "based upon common knowledge," is that your own knowledge?

253 A. My own knowledge and knowledge of others that I know are familiar with these things.

Q. Who were the people whom you discussed that with? I am talking about the particular people in regard to your conclusions as to newspapers in the country who sell color comic supplements.

A. Well, I discussed it—

Mr. MOORE: Wait a minute. He has already testified to that once. I am going to put you on notice that we are not going to go over and over and over. He has testified very clearly the ones he talked to.

Mr. FELDMAN: I am asking him specifically as to this point.

Mr. MOORE: That is the point he testified to before. You may answer.

Mr. FELDMAN: Will the witness answer?

The WITNESS: Well, I am lost. Will you repeat it for me, please?

(Whereupon the last question was read by the reporter.)

254 The WITNESS: It is still Chinese to me.

Mr. MOORE: I suggest you reframe the question. It doesn't make any sense the way it is.

By Mr. FELDMAN:

Q. Did you speak with Mr. Gorman with respect to this particular formula?

A. Yes, I did.

Q. Who else did you talk to just in regard to this particular formula?

A. I talked to our man, Bob Doyle. He handles all our billing and he is familiar over the years he has been with us about a lot of these newspaper runs as to how they are printed and how they have been changed around back and forth over the years. I talked to Jack Koessler who has quite a knowledge of these things. I talked to Walter Koessler as to his knowledge of where some of these runs were printed. I talked to Bessie Gorman who handles these matters down at Wilkes-Barre, John Booth down there. I talked to a number of people. I talked to our salesmen, I talked to Leonard Hershiser, one of our 255 salesmen. He is formerly general manager of the Star Color Printing Company in Wilmington, Delaware; he

is very familiar with these things because when he was in that category he was out soliciting newspaper accounts and he went out all through the southeastern district and solicited all these newspapers and he found out from them where they were having their color comics printed and those were the sources of my information.

Q. Directing your attention to Defendant's Exhibit A and to the figures you have under the year 1954, do these figures at any point here represent a total color comic production in the United States?

A. I would say that it is probably within one or two percent of what it might be. I am not an expert on this thing and I told you how I developed this information and I don't make any claims that it is perfect.

Q. Going back to the year 1954, I notice here that you have King Features and N.E.A. listed and in those years were 256 King Features and N.E.A. engaged in the printing of color comic supplements?

A. King Features was not.

Q. Was N.E.A. in that year?

A. I think at that time they operated what was known as the Buffalo Color Press.

Q. Do you know whether or not N.E.A. sold all the color comic supplements which were printed by Buffalo Color Press?

A. Whether N.E.A. sold them all?

Q. That is right, sir.

A. I would have no way of knowing that, Mr. Feldman.

Q. Did you consult with N.E.A. with regard to drawing up these statistics here at all or look at any N.E.A. records?

A. No.

Q. Did you consult with anyone at King Features in regard to drawing up these statistics?

A. No, I didn't.

Q. Do you know whether or not King Features in the year 1954 purchased all its comic color supplements from 257 International?

A. To my knowledge they did not.

Q. Was any effort made on your part or anyone else to determine what other color comic supplements were being printed for them, namely by any other printers other than International in that year?

A. Well, I know that we had two or three jobs of theirs at that time ourselves.

Q. Do you know any other printers who had any other jobs at that time?

A. Oh, I think they had a couple of jobs that were being printed in Fort Worth, the Star Telegram plant.

Q. But you did not determine all the jobs that were being printed for them, did you, prior to your compiling this list, namely, Defendant's Exhibit A?

A. Did I consult with King Features?

Q. That is right, in determining all the printers who supplied them in the year 1954?

Mr. MOORE: I am going to object to this. I think you are misreading the exhibit. This doesn't purport to tell 258 where King Features and N.E.A. sold printing and the other people on here. This is an estimate arrived at scientifically in accordance with the established records as to what they sold. It doesn't purport to show where they were printed. They sold it.

Mr. FELDMAN: I am asking the witness now whether these figures at any point here attempt to show the total color comic production for the year 1954 and he says yes.

Mr. MOORE: Yes.

Mr. FELDMAN: All right, now, you are talking about selling. The witness is not talking to me about selling.

Mr. MOORE: He is not talking to you about printing or where they were printed, what you are talking about.

Mr. FELDMAN: I am asking him now whether he knew where they were printed.

Mr. MOORE: He told you he didn't.

Mr. FELDMAN: All right, I want to find out if he made any other efforts. He told me he knows some knowledge. I 259 want to find out how complete his knowledge was.

By Mr. FELDMAN:

Q. Directing your attention to King Features, have you determined all the printers who supplied King Features in the year 1954?

A. In 1954 King Features was having some work done at Eastern Color, I believe. Some of their jobs were printed in their own printing plant, some of them were printed by us, some were printed by International Color. I know they had at least one job in Fort Worth, this Star Telegram. I couldn't say

positively whether World Color ever did any printing work for King Features or not or Acme of San Bernadino, California.

Q. This is just your present recollection at that time, is that correct, sir?

A. What is that?

Q. That was your present recollection when you discussed these statistics that are listed in Defendant's Exhibit A?

Mr. MOORE: Wait a minute, I object to that. He
260 wasn't drawing it to show where they were printed. He was showing who was selling the supplements and this chart reflects who was selling the supplements.

Q. In other words, at any rate then, you never determined completely who was printing supplements in 1954, is that correct, sir?

A. No.

Q. Now, directing your attention to the circulation figures under the year 1954, do these figures herein regard to circulation just represent the total circulation figures you obtained from Editor and Publisher?

A. That is right.

Q. Now, does this purport in any way to represent the total color comic production for the year 1954 and I am referring now to the figures under "Circulation"?

A. You are talking about Gains here?

Q. Yes?

A. You are under gains now?

Q. No, I am talking about in the second column under
261 1954.

A. You are talking about circulation figures here?

Q. That is right, sir?

A. What do you want to know?

Q. I want to know whether they in any way, the circulation figures in any way represent the total color comic production for the year 1954?

A. I think it is pretty close.

Q. Now, are you aware of the fact that color comic supplements are sold in four-page units and go all the way up to at least 24-page units?

A. Yes, I am very aware of that.

Q. Upon what basis then did you say that the circulation figures are close to that?

A. To the number of 4-page units, it doesn't mean a thing.

Q. I am talking about actual color supplements published in the year 1954; isn't it a fact that some newspapers may have four pages in their color comic supplements and other newspapers may have 24-page units of color comic supplements?

262 A. I never heard of one having four; I never heard of one having twenty-four unless it would be a tabloid size. Are you talking about standard size?

Q. I am talking about standard size.

A. I never heard of one with twenty-four pages.

Q. Do the unit of pages vary then to your knowledge?

A. They vary all the time from week to week.

Q. What are the number of pages within which they vary?

A. Well, we have accounts that will vary anywhere from eight-page standard to an eighteen-page standard, so therefore some weeks they will run eight pages and some weeks they will run ten, twelve, fourteen, depending on what use they have for the section. The advertising content determines to a great extent the number of pages they publish in their color comic supplements.

263 Q. Therefore, the mere circulation of a newspaper will not be indicative, will it, of the total pages of color comic supplements the newspaper sells?

A. Not within a mile. I defy anybody to get that figure; it is impossible of computation. It would take you five years there to figure anything like that out. That is why I say these figures in Mr. Carlson's thing here have no particular meaning; they are based on these four-page units which have no substance at all. I mean, these are more accurate (indicating), they are a more accurate gauge of what goes on in the newspaper trade.

Q. Let's not argue the point, Mr. Hammond—

Mr. MOORE: I suggest that you started the argumentative question. You started the argument when you asked him if it wouldn't show whether they have one page or sixteen pages. It doesn't purport to show that. It purports to show those are

the number of supplements that comprise without

264 regard—

The WITNESS: What difference does it make?

Mr. MOORE: Please be quiet a minute. Let me finish talking. Without regard to whether they are four-page units, as you have your figures, or sixteen pages.

By Mr. FELDMAN:

Q. All right, sir. Now, Mr. Hammond, isn't it a fact that printers throughout the country generally—now I am talking about Greater Buffalo—

A. You are talking about Greater Buffalo?

Q. No, I am not talking about Greater Buffalo.

A. You are not?

Q. They base their production units upon four-page units generally?

A. So do we.

Q. Well, is that generally the way it works?

A. We base it on eight-page sections; take your choice, eight pages, four pages, what's the difference?

Q. Aren't they based upon four-page units in regard
265 to job?

A. That was the method used for International and King for some cock-eyed reason, I couldn't tell you why.

Q. Do you know how other printers throughout the country outside of Greater Buffalo and International, base their unit of production?

A. No, I don't, whatever. There is no criterion or anything.

Q. At any rate, you don't know how they base their units?

A. No, I don't know how they base their units.

Q. Isn't it a fact that if a publisher were to purchase units of color comic supplements, in units other than four, such as six pages or ten pages, that printers throughout the country will generally charge more per page than if they bought it in terms of four-page units?

Mr. MOORE: I am going to object to the form of that question. It calls for a conclusion, if something happened and something else happened.

Mr. FELDMAN: Let's preface it with the word "when."

266 Mr. MOORE: It is the same objection whether you call it if or when, you are making an assumption.

Mr. FELDMAN: I am going to ask the witness to answer the question.

Mr. MOORE: I will let him answer, but I want my objection noted to the form.

Mr. FELDMAN: Do you know, sir?

Mr. MOORE: Do you know what other printers would do?

The WITNESS: What they do—

Mr. MOORE: Listen to the question. Do you know what other printers would do, do you know of your own knowledge?

The WITNESS: In regard to what? Read the question.

Mr. MOORE: Would you read the question?

(Reporter repeated the last question as follows.)

267 **Q.** Isn't it a fact that if a publisher were to purchase units of color comic supplements in units other than four, such as six pages or ten pages, that printers throughout the country will generally charge more per page than if they bought it in terms of four-page units?"

The WITNESS: I haven't the foggiest idea.

By Mr. FELDMAN:

Q. You have no idea at all?

A. No.

Q. What has been the custom in regard to Greater Buffalo Press?

A. Everything is relative. Our prices are proportioned for the number of pages, two, four, six, eight, ten, what have you. It is all the same.

Q. It doesn't make any difference at all?

A. No, it doesn't make any difference at all.

Q. Is that the same, as far as you know, in regard to International Color Printing Company?

A. I don't know.

Q. So when you are speaking then in that regard, you only know as to what Greater Buffalo Press does?

A. In regard to pricing?

268 **Q.** Yes?

A. The only area in which I have intimate knowledge is with regard to Greater Buffalo Press.

Q. You don't know anything about the other printers?

A. How they base their prices, I haven't the slightest idea.

Q. In regard to Greater Buffalo Press, does Greater Buffalo base its price upon the units of pages bought, or upon the circulation of the paper?

A. I think we explained that when we told you what our pricing methods were.

Q. I would like you to tell me now, is it just the number of supplements bought or is it the pages contained therein?

A. Initially, Mr. Feldman, you have a basic job to perform, the make ready operation. If it is eight pages, it is \$232.00; if

it is ten pages, it is \$290.00; if it is twelve pages, it is \$324.00. You can see for yourself that is all relative—proportioned, I mean. Now, that is the area where circulation affects it, regardless of the number of copies printed, that cost has to be absorbed in whatever quantity the newspaper requires.

269 Now, from there on, the paper content, the ink content, the press time and the handling is all proportioned in two-page units, two, four, six, eight, you can figure it out for yourself, and that is the way it works. You will find always the additional thousands prices in every instance are the same. The only time you have any variation in prices between one customer and another is due to the quantity that they use.

Q. Do you know whether or not Greater Buffalo or, at least, any other affiliate of Greater Buffalo, or subsidiary, has reimbursed Mr. Clinton for time spent at Sylacauga prior to the time he left International?

A. For the time he spent at Sylacauga prior to the time he left International?

Q. That is right, sir, whether he or International was reimbursed?

A. He was always on the payroll of International Color Printing.

Q. And as far as you know then, International was not paid any amount of money in connection with the services he rendered at Sylacauga by Dixie or any other subsidiary 270 of Greater Buffalo?

A. No, he was not.

Mr. FELDMAN: I have no further questions.

By Mr. MOORE:

Q. One item I neglected to cover: Calling your attention to page 4 of an affidavit attached to the Order to Show Cause made by one, Jack R. Hornaday, at the top of page 4, where he estimates, makes certain estimates of numbers of supplements purchased in an area consisting of seven or eight named states in the southeast—

A. Ten.

Q. Ten?

A. Yes.

271 Q. Did you, in the course of the computation you made, make a computation from the source you have recited before affecting that area?

A. Yes, I did.

Q. Do you have that computation?

A. Yes I have. I have it here.

Q. Now, based on the figures you used in compiling defendant's exhibit A for identification, what circulation of the early circulation of colored comic supplement do you compute for those ten states comprising the southeast as they are characterized in this affidavit?

A. Well, according to my calculations there were 127 newspapers located in those ten states with circulations of 6,454,189.

Q. From the information available to you that you used in preparing defendant's exhibit A for identification can you indicate what companies sell what numbers of supplements in that area?

A. The Greater Buffalo Press, 9.

Q. What?

A. 9.

Q. 9 papers?

272 A. 9 newspapers.

Q. What circulation?

A. With a circulation of 1,590,006.

Q. What percentage of the total is that?

A. I didn't compute the percentage.

Q. What about King?

A. I figured King at 49 with a circulation of 3,167,899.

Q. Forty-nine per cent or forty-nine papers?

A. I didn't figure these percentages, Jim. Do you want me to figure them?

Q. No. 49 papers with 3,167,899?

A. That's right.

Q. What about Atlantic?

A. N.E.A. do you want?

Q. N.E.A.

A. N.E.A. had 30, a circulation of 574,365.

Q. What about Atlantic?

A. Atlantic had one newspaper contract which they sublet to the Star Color Printing in Wilmington of 137,540. Now whether you combine that with Southern Color Print or not, I don't know.

Q. What about Southern?

273 A. Southern had 22 newspapers with circulations of 626,996.

Q. What about other printers of colored comic supplement?

A. I figure there were twelve with circulations of 209,090.

Q. What about the newspapers themselves printing in their own plants?

A. There were four circulations of 148,293.

Q. And those computations were arrived at in the same manner as the computations you have described in defendant's Exhibit A for identification?

A. Same manner I prepared that.

Mr. FELDMAN: Excuse me. At this time do you want to offer that a defendants exhibit, what he is reading from?

Mr. MOORE: Yes.

The WITNESS: I haven't got any copies of this, Jim.

Mr. MOORE: I will mark it. We will keep it. Defendant's Exhibit B for Identification.

274 (Whereupon the document was marked Defendant's Exhibit B for Identification.)

By Mr. MOORE:

Q. Now, you have testified that there was very often a wide variation in the number of pages in the supplement furnished by the same newspaper over various weeks, is that right?

A. Yes.

Q. Is that variation due to advertising?

A. Yes, almost entirely due to advertising.

Q. In other words, the number of features stays the same but the advertising changes?

A. Generally, the features—to some extent they might drop features to save pages, but the control of the size of the supplement is almost entirely dependent on the advertising content in the section.

Q. Therefore, the one constant in these figures is the number of supplements rather than the size of them?

A. Boy, I believe in that!

275 Q. And your computations are based on the number of supplements furnished by these papers?

A. That is what my computation is based on, the number of supplements, which is the only sensible way to approach the thing.

Mr. MOORE: That is all.

Mr. FELDMAN: Are you through?

Mr. MOORE: Yes.

By Mr. FELDMAN:

Q. Mr. Hammond, in regard to the supplements you just spoke about being printed in the southeastern part of the United States, do you know how the size varies, how great the variation is?

A. I didn't say they were printed in the southeastern part of the United States.

Mr. MOORE: Published.

The WITNESS: Published.

Mr. FELDMAN: Published. Excuse me.

By Mr. FELDMAN:

Q. Do you know how great the size varies, whether a 4-page goes to an eight from one week to another or 276 whether it is just a one or two-page?

A. I never heard of a 4-page supplement.

Q. 6-page?

A. I have never seen one.

Q. Well, let us assume that there is a 6-page then. Do you know from your own experience how that 6-page fluctuates, whether it becomes twelve one week, or whether the normal inclination is, if it does increase, to go only one or two extra pages?

A. Papers that small, Mr. Feldman, don't change a great deal. If they have only got six pages, they haven't got any advertising and they hardly ever change.

Q. What types of supplements?

A. Well, newspapers that publish say an average of twelve papers will vary considerably. They will go to fourteen; they will go to ten. If it is a real dull period, they might even go down as far as eight occasionally.

Q. Are there ever instances when the number of pages would double?

A. Never saw anything like that happen.

277 Q. Mr. Hammond, during your experience in the employ of Greater Buffalo Press have you yourself actively gone out and solicited publishers in regard to the sale of color comic supplements?

A. You asked me that.

Q. I want to know again now. At any time?

A. Initially?

Q. Well, yes, initially.

A. No.

Q. Have you ever called upon publishers?

A. Oh, a great deal.

Q. How much of your time within the last year has been spent in calling upon publishers?

A. Not very much in the last year.

Q. What do you call "Not very much"?

A. Oh, during the past year I probably haven't spent a total of, well, I will say two weeks in time of calling on publishers. Two to three weeks maybe.

Q. What year do you recall having spent the greatest amount of time in calling upon publishers?

A. Well, it was probably around the years 1956 through '58, particularly the years where we had price increases.

278 Q. During those years did you call upon publishers throughout the country or did you confine your activities to particular areas?

A. Particular areas.

Q. What area or areas were those?

A. Well, could I ask a question here?

Mr. FELDMAN: No.

Mr. MOORE: If you know, say so.

Mr. FELDMAN: If you don't know, say you don't know.

Mr. MOORE: Well, now, you are going to confine yourself to the United States.

Mr. FELDMAN: Yes, only the United States.

The WITNESS: Well, most of my activities have been in Canada. Now in addition to that I have called in the Western New York area and part of Ohio, Cleveland, Erie, Buffalo, Rochester, Syracuse, Utica, Elmira, and what have you—around that area.

279 By Mr. FELDMAN:

Q. How much of your time during the year 1958 or that period that you are talking about when you had price increases did you spend in calling upon publishers in the United States?

A. Oh, gee, I don't know.

Q. With most of your time in the employ of Greater Buffalo concerned with calling upon publishers during that period?

A. Oh no. I wouldn't say most of my time.

Q. Was it a small amount of time or large?

A. At one time I probably spent maybe twenty-five per cent of my time in that sort of activity.

Q. Did you ever call upon publishers located in the southeastern part of the United States?

A. Never.

Q. Did you ever spend any time calling upon publishers in the western part of the United States and I am talking about the west coast.

A. How far west? I have called on publishers in Chicago.

Mr. MOORE: He said "west coast".

The WITNESS: Oh, the west coast? No, I have never been to the west coast.

By Mr. FELDMAN:

Q. Have you ever called upon publishers in the State of Texas?

A. Yes.

Q. How many such publishers?

A. Three or four. I called on publishers in Louisiana, too.

Mr. MOORE: I am not going to—

The WITNESS: What is this all about?

Mr. FELDMAN: I am through with my line of questioning.

At this time I wish the record to also note my former objections as to materiality and relevancy as to any questions relating to the applicable market of color comic supplements sold in the southeastern part of the United States.

Mr. MOORE: I would reply with the same remark
281 I had to the other objection.

Mr. FELDMAN: I have no further questions.

Mr. MOORE: He is excused then?

Mr. FELDMAN: Unless counsel have some questions.

Mr. LONDON: I have no questions.

Mr. STEVENS: No questions.

Mr. FELDMAN: Off the record.

(Discussion off the record.)

Mr. FELDMAN: Let the record indicate that the witness, Mr. William Hammond, may sign the deposition before any notary public in the State of New York with the same force and effect as if signed before the reporter.

(Whereupon the deposition ended at 3:30 p.m.)

281-a

[Caption Omitted in Printing]

Proceedings held before HON. JOHN O. HENDERSON,
U.S. District Court Judge, Western District of New York,
on October 25, 1961, at Buffalo, New York.

Appearances: Messrs. Raichle, Banning Moore & Weiss, by James O. Moore, Esq., & Arnold Weiss, Esq., appearing in behalf of Defendant, Greater Buffalo Press.

Messrs. Gallop, Climenko & Gould, by Jesse Climenko, Esq., and Messrs. Lord, Day & Lord, by Robert B. Haynes, Esq., appearing on behalf of Hearst Corp.

Messrs. Baker, Hostetler & Patterson, by Richard F. Stevens, Esq., appearing on behalf of Newspaper Enterprise Association, Inc.

Raymond M. Carlson, Esq., Elliott H. Feldman, Esq., Department of Justice, Anti-Trust Division, appearing in behalf of Plaintiff.

282 PROCEEDINGS OCTOBER 25, 1961, COMMENCING AT
11:00 A.M.

The COURT: Gentlemen, as you know, we were held up a bit by Mr. Stevens' inability to get here. He called me from the airport. I asked whether he would have any objection to our proceeding without him, and he said none. We may go ahead. He will be here shortly.

Mr. MOORE: If your Honor please, I conceive this to be a much adjourned return day of the motion before your Honor, and my understanding is that the Government's proof on its motion for preliminary injunction, its primary proof is now in. Am I correct?

Mr. CARLSON: That is correct.

Mr. MOORE: And we have, on behalf of the defendant, whom I represent, filed with the Court certain affidavits, certain depositions, and today what we propose to do is to supplement that proof that we have already put in, supple-

283 ment it to some extent, perhaps clarify it to some extent in the form of oral testimony. I am frank to say that the testimony in some respects will be cumulative of some of the proof that has been made in affidavit and deposition form, but I would prefer to proceed in that manner because I think this question lends itself to development of the facts through testimonial form, rather than through the affidavits. On that premise, your Honor, I would proceed with your permission.

The COURT: You may proceed.

Mr. CARLSON: Excuse me, Mr. Moore, we did have this one formal matter.

Mr. MOORE: Yes.

Mr. CARLSON: Your Honor will recall that Mr. Crimi, Assistant United States Attorney, obtained a protective motion under our special statute, 15 U.S. Code 23. Subpoenae were
 284 duly issued to some of the persons named in there. With the development of Mr. Moore notifying us thereafter as to his witnesses, four of those subpoenas were canceled. There are five other persons not named in the motion that are present, were kind enough to come at our request. Because the time was short, we couldn't get the subpoenas served. I would ask your Honor, I would make a speaking motion to your Honor, that you permit subpoenas to issue so that the people may be paid. I am not saying they will be called, since we don't know what the nature of the proof would be as put in. These people are present on the part of the Government.

The COURT: I make an order that they will be paid for their mileage coming here as though they had originally been subpoenaed by the Government.

Mr. CARLSON: Does your Honor wish me to put the
 285 names in the record at this time?

The COURT: Do it during the recess. On the other hand, why don't you do it now, so it won't be overlooked.

Mr. CARLSON: The names of the persons who are not covered by the prior order, and who are present in Buffalo at the request of the Government and to whom subpoenas should issue to permit their payment are: William Foy, of Wilkes Barre, Pennsylvania. Joseph J. Gorman, of Wilkes Barre, Pennsylvania. William J. Williams, of Wilkes Barre, Pennsylvania. Jack R. Hornady of New York City. It is in the vicinity of New York City, I think the town is Scarsdale. The last one, Robert B. Smith of Newport News, Virginia. Thank you very much, your Honor.

286 JOSEPH J. GORMAN, called as a witness on behalf of the defendant, Greater Buffalo Press, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. MOORE:

Q. Mr. Gorman, you reside in Wilkes Barre, Pennsylvania?

A. Kingston, Pennsylvania.

Q. Is that located in the environs of Wilkes Barre?

A. Yes.

Q. How long have you lived there?

A. I lived in that neighborhood for all my life.

Q. Well, I will ask you how long is that, how old are you?

A. Sixty-five.

Q. And what is your occupation?

A. President and General Manager of International Color Printing Company.

Q. How long have you been the President and General Manager?

A. Approximately thirty-seven years.

Q. Now, when was the International Color Printing Company founded?

A. The Telegram Publishing Company primarily was founded in 1922. The name was changed to International Color Printing Company in 1924.

287 Q. And it has functioned since 1924 as International Color Printing?

A. That is correct.

Q. Is that a Pennsylvania Corporation?

A. Pennsylvania Corporation.

Q. What was the business of the original company, the Telegram Company?

A. The original business was to print a weekly Sunday newspaper.

288 Q. What was the distribution of that newspaper?

A. Do you mean the circulation?

Q. Well, in what areas was it distributed?

A. In the Wilkes-Barre area.

Q. And how long did it print the newspaper?

A. About two years.

Q. Then what was the fate of the newspaper?

A. The newspaper was sold and then went out of business.

Q. Was that at the time that the name of the company was changed?

A. In 1924, at the time we sold the newspaper.

Q. All right. Now, what business did International embark on at that time?

A. The printing of color comics supplements.

Q. And for what papers did it print these color comics supplements?

A. We started to print, first of all, for King Features Syndicate quite a number of small newspapers, I don't remember the

names of them at this time, but we picked up two newspapers of our own directly, one from Asheville, North Carolina and one from Providence, Rhode Island.

Q. So, you had contracts originally with two newspapers in the locations you have just described and a contract with King, is that right?

289 A. First we had no contract with King. King contracts started about 1925 or 1926. There was no written contract.

Q. On the original contract with King how was that handled? Were there orders placed for printing?

A. Orders were placed for the printing and we had a contract to print the minimum of a certain number of thousand of four-page sections per week.

Q. Was this the entire business of International at that time?

A. That is all we had, the printing of comic supplements.

Q. Now, did there come a time when you entered into a contract with King?

A. About 1926.

Q. And did you retain also your contracts with other newspapers?

A. No, we turned that printing over to King Features Syndicate.

Q. Now, from 1926 to 1955, had International ever had a contract with any newspaper to print color comics supplements?

A. No, sir.

Q. During that same period has International ever solicited from any newspaper the printing of color comics 290 supplements?

A. No, sir.

Q. During that period has International ever employed a salesman?

A. No, sir.

Q. Well, confining yourself to that period, will you describe just what the business of International was?

A. King Features salesmen sold contracts for the printing of colored supplements to other newspapers and then they sublet the printing to us. We acted as a subcontractor for King Features.

291 Q. Well now, was that relationship carried out pursuant to a contract or pursuant to a series of contracts with King?

A. A series of contracts with King.

Q. And without getting into the details of the contract, can you describe briefly in substance what the contract was?

A. The substance was that we were to print for King Features Syndicate on an exclusive basis. We were to do all the printing that King had and that King would give printing to no one else but us, but the time came when it was understood that we would be exclusive printers and that we would print for no one else but King, but King could give twenty-five percent of their work to others.

Q. Now, did you handle most of the relations with King during this period?

A. The contractual relations I handled most of.

Q. Now, during this period, and I will define it again as from 1926 through 1955, what contacts did you have with newspaper publishers or newspaper owners?

A. Occasionally I went out with the King Features Syndicate salesmen as a matter of service. The salesman would deal with price and he would turn to me when it came 292 to a question of a technical matter such as how big a section would be, transportation and so on, but when it came to a matter of dealing with the newspaper on price, I left the room at the request of the King Features salesmen.

Q. Now, in other words, over these years you had nothing to do with price?

A. At no time during all of that period did I know anything about their price.

Q. And did you have anything to do with sales?

A. I had nothing to do with sales except in a service way.

Q. Now, over the years in question, can you describe the nature of your relationship with the King organization?

A. My personal relationship was good. My business relationship was such that I had a constant and everlasting struggle through each contract to get sufficient money to make a fair profit or to make even a small profit and I would agree to some extent what Mr. Nicht said in one of his memorandums, they controlled us lock, stock and barrel.

Q. Now, Mr. Nicht, who is he?

A. He is the general sales manager of King Features Syndicate.

293 Q. Now, over these years in question, how did International fare financially in its business?

A. We had a struggle throughout all the years. At no time throughout the thirty-five or thirty-seven years did we ever make more than one percent profit on our sales.

Q. Now, directing your attention to the year 1954 and the close of the year 1954, what was the financial condition of International?

A. At the close of the year 1954 we had a deficit of working surplus of approximately—working capital, rather, of approximately, \$100,000.00.

Q. Now, you say a deficit in working capital. Would you describe that? In using working capital, you are referring to the difference between your current assets and current liabilities?

A. Yes, sir.

Q. And at the close of 1954 you state that your current liabilities exceeded your current assets by approximately \$100,000.00?

A. That is correct.

Q. Now, who owned the capital stock of International during the years in question?

A. In the early part of the years, it was owned by Mrs. May N. Govin and her son and her daughter—

294 The COURT: What was that name?

The WITNESS: May N. Govin, and her son and her daughter. For the past fifteen or twenty years the stock was owned by the son and the daughter. The daughter's name is Mrs. Mazie Scofield. The son's name was Ralph Govin.

By Mr. MOORE:

Q. Now, during the years that Mrs. Scofield and Mr. Govin owned the company, did they take any active part in it?

A. No, sir.

Q. Did you conduct all of the affairs of the company?

A. Yes, sir.

Q. Now, during these years in question did the stockholders of International make any further contributions to the capital of the company?

A. No, sir. There were one or two occasions when we borrowed money from one stockholder but no contributions in the way of capital.

Q. Well, what was the extent of that borrowing?

A. \$35,000.00.

Q. Now, when did you first give consideration to the
295 establishment of a southern affinity or southern plant?

A. I don't know the exact date but it was approximately twenty-five years ago.

Q. And did you make any investigations from time to time?

A. I made investigations over the twenty-five year period.

Q. And did you have any communications with your customer, King Features, on that subject?

A. Constantly, communications in writing and verbally about the necessity, the absolute necessity of getting a plant started in the south.

Q. And just to get a little of the background, in the business of printing and selling photo comic supplements, is the problem of freight, cost of freight, a substantial item?

A. That is a substantial item. That is the main reason why we wanted to start a plant in the south.

Q. Now, did there come a time when you made a more detailed investigation of the possibility of building a plant in the south?

A. We were held up on a number of occasions by the lack of cash. We were held up also by the inability to get news-
296 paper cheap enough, but then in 1954 it came to me that the Coosa Newsprint Company would be able to supply us with some newsprint and that is when our investigation became more detailed.

Q. Now, the Coosa newsprint was located where?

A. At Coosa, Alabama.

Q. Where is that in relationship to Sylacauga?

A. About ten or eleven miles from Sylacauga and ten or fifteen miles from Birmingham.

Q. Was your Coosa mill soliciting the building of a printing plant in the area?

A. Prior to the time they saw me, I believe they solicited other print companies, particularly, but one that I know,
297 the Greater Buffalo Press.

Q. Now, apropos of that solicitation, did you make a trip to Sylacauga?

A. Yes, sir.

Q. And when did you first go there?

A. About the middle of 1954.

Q. And then continuing, was another trip made in 1955?

A. A number of trips were made between 1954 and 1956.

Q. Now, at any time during this period and prior to 1956 did International ever commit itself to the building of a plant in Sylacauga?

A. Never actually committed ourselves to the building of a plant.

Q. Did you make some tentative plans?

A. We made tentative plans hoping that conditions might turn out so that we could go ahead, nothing definite.

Q. What was the stumbling block?

A. The stumbling block was lack of cash.

Q. Let me ask you, during 1955 were you still under contract to King?

A. Yes, sir.

Q. And what was the term of that contract?

A. For the early part of 1955, we were under what we call six-months contract. In other words, a six months notice of discontinuance. We were striving for a longer contract
298 in 1955.

Q. Did you have negotiations w [redacted] King during that period for a longer term contract?

A. Yes, sir.

Q. Did you have negotiations with King on the subject of financing a plant?

A. Yes, sir.

Q. Were either of those negotiations successful?

A. No, sir.

The COURT: Excuse me, Mr. Moore, Mr. Stevens is here. Let him get comfortable at the counsel table.

Mr. STEVENS: Thank you, Your Honor. I apologize Your Honor.

The COURT: Not at all, I understand perfectly.

By Mr. Moore:

Q. I call your attention, Mr. Gorman, to a copy of a letter dated March 11, 1955, addressed to Frank J. Nicht, King Features Syndicate, from International Color Printing Company, Joseph J. Gorman, which letter appears in the Government's exhibits identified as Reply Exhibit 5 annexed to the

299 Reply Affidavit of Mr. Raymond Carlson, and I ask you if you wrote that letter?

A. Yes, sir.

300 Q. Now, I call your attention to the phrase contained in the second paragraph of the letter, reading: "It is

impossible for us to commit ourselves to purchase of land and erection of a building until we have a long term contract at a price which will enable us to amortize within a reasonable number of years." I ask you if this was a part of the negotiations you had described with King?

A. That is the general tone of the negotiations throughout the period.

Q. I call your attention to the second next succeeding sentence: "Also, we cannot even think about contacting a bank until such time as we have a long contract which will give us a reasonable assurance of a fair profit", and ask you if that also was a part of that negotiation that you were carrying on?

A. Yes, sir.

Q. Now, the tentative plans that you had for a southern plant, will you describe those tentative plans with respect to how you intended to set it up if you had gotten the financing?

A. We had in mind a building of about twenty-five thousand square feet. We had in mind the possibility of moving either presses from Peoria to Wilkes-Barre, and then presses 301 from Wilkes-Barre to Sylacauga, or presses from Peoria to Sylacauga. It was indefinite, but we had in mind the use of presses we then had, single width presses, at either Peoria or Wilkes-Barre.

Q. Now, Peoria was a plant maintained by International in Peoria, Illinois, is that right?

A. That is correct.

Q. What did your plans entail with respect to the volume of printing that would be moved?

A. Counting up all of the business we had in the south and realizing that in nearly every instance there would be a heavy transportation savings for the newspapers we figured on the possibility of printing from six million to eight million four-page sections on the presses which we would put there over a period of a year or two.

Q. And what was your plan with respect to Peoria?

A. We expected to close the Peoria plant down at that time.

Q. Let me ask you as to the Peoria plant what the history of that was operation-wise?

A. We started the Peoria plant in 1936, when there was very excellent transportation facilities there, but finally it de-

veloped to a point where passenger trains carrying bag-
302 gage didn't go into Peoria. So, it became very bad from

the transportation standpoint. Our production there wasn't as good as it ought to be at any time. The press was incapable of printing varied size runs and the unions were very difficult so far as production was concerned. As a result, we had a more or less steady loss.

Q. Now, had you on behalf of the owners of the stock of International prior to 1955 ever made any attempt to dispose of the company?

A. The owners themselves made an attempt to dispose of it.

Q. Was there any negotiation on that?

A. There was negotiation with Hearst newspapers.

Q. And what was the result of that negotiation?

A. Hearst newspapers didn't want it.

Q. Did there come a time when you had some negotiations, or conducted some negotiations, with Mr. Walter Koessler of Greater Buffalo Press?

A. Yes, sir.

Q. When was that?

A. The latter part of 1954, as I recall it.

Q. How long did those negotiations—

A. They lasted until June, 1955.

303 Q. And in June of 1955 what was the result of those negotiations?

A. Greater Buffalo Press bought the stock of International Color Printing Company.

Q. It acquired all of the outstanding stock?

A. Yes, sir.

Q. And did you know the price?

A. Approximately five hundred seventy-five thousand dollars.

Q. Now, subsequent to the purchase of the International stock by Greater Buffalo, was there any change in the management of the International?

A. There was no change in the Wilkes-Barre management of International subsequent to the change.

Q. Did you continue as president?

A. I continued as president.

Q. And as general manager?

A. And as general manager.

Q. Did you direct all of the operations of the company?

A. Yes, sir.

304 Q. And what, if any, changes were effected at Wilkes Barre, the plant of International, subsequent to the acquisition of its stock by Greater Buffalo Press?

A. Very substantial and material changes which eventually resulted in a great saving in production.

Q. Will you describe briefly what those changes were?

A. First of all, it started in the stereotype department, in which we make plates. They showed us a new way that cut matts, so that the matts would be perfectly square, and plates from these matts would squarely fit on to the press.

Q. You say they showed you?

A. Greater Buffalo Press showed us. They provided us with the machines necessary to cut these matts in this manner. There was no point in having matts which were perfect unless we had plates that were nearly perfect. They provided us with machines, which we had never seen, which would allow us to register the plates. When they would go on the press they would all fit, fitted together. Ordinarily, prior to 1956, when we put plates on the press, they would be from a quarter of an inch to an inch out. As a result, it would take four hours of 305 press time to register the plates. By reason of the equipment which Buffalo sent to us, which we started to operate ourselves, we were able to cut the registry time in half. This resulted in a considerable saving in production.

Q. Do you describe that change in system as a preregistry system?

A. Pre-registry, that is right.

Q. In your experience in the printing business, had you ever seen that before?

A. I had never seen it before.

Q. What work was entailed? Can you describe, not in detail, the general nature of the work that was entailed to effect this; did it take a long period of time?

A. We had to change all of the clips on our presses, we had to change the rings, we had to move our stereotype equipment from Parsons to Sheldon, which is in Wilkes Barre.

Q. Parsons is a plant?

A. Yes, which we own.

Q. Where is that?

A. In Parsons, Pennsylvania, part of Wilkes Barre.

Q. You call that the Parsons plant?

- A. Yes.
- 306 Q. You have a plant called the Sheldon plant?
 A. Yes, where we do all of the stereotyping now.
 Q. Well, let me see if I can shorten it up. How long did it take to completely install that preregistry system?
 A. Probably about two years. Maybe a little more.
 Q. And the installation was completed in 1957 or 1958?
 A. About 1957 or 1958.
 Q. What was the effect of this change upon the press room production?
 A. It cut our registry time to the point where we increased our press room production, per press, by twenty-five percent.
 Q. Did that change in that increased efficiency effect the earnings?
 A. As a result of the change in production, the earnings were improved to the point where, over a period of five years, we increased our working capital position from a deficit of one hundred thousand dollars, to approximately eight hundred thousand dollars surplus.
 Q. So that getting into 1960, your working capital, which you define as the excess of your current assets over current liabilities, was around eight hundred thousand dollars?
- 307 Mr. FELDMAN: Could we have the period stated as to the last question?
- Mr. MOORE: I said, from the time of the acquisition of the stock of International by Greater Buffalo Press up through 1960.
- By Mr. MOORE:
- Q. Now, how did you finance that installation of the preregistry system?
 A. As I said before, these machines came from Buffalo. Buffalo billed us for them. We paid for them, we financed it by reason of the fact we were showing a greater profit than we did before 1954; so that at the same time we were improving our current position, we improved our fixed assets position, and we increased our fixed assets over a five year period by approximately six hundred thousand dollars.
- 308 Q. In other words, from the time that Greater Buffalo acquired the stock of International up to and through 1960, your fixed assets—before depreciation is it?
 A. Before depreciation.

Q. —increased by how much?

A. Approximately six hundred thousand dollars.

Q. Now, in paying Greater Buffalo for the materials that were used and the work that was done on these facilities, were these payments made currently or were they deferred at the beginning?

A. They were deferred slightly but then they started to make them currently.

Q. And you made them currently as you got the earnings?

A. Yes, sir.

Q. Now, after the acquisition of the International stock by Greater Buffalo, did you negotiate another contract with King?

A. Yes, sir.

Q. And what was the term of that contract?

A. The term of that contract was ten years.

Q. And without going into detail, were the terms of the contract substantially the same as they had been?

309 A. Substantially the same.

Q. Now, did there come a time when the Peoria plant of International was closed?

A. Yes, sir.

Q. And what was the reason for the closing of that plant?

A. As I have already stated, one of those reasons was the lack of transportation facilities. They could ship from Buffalo to St. Louis and in that area almost as cheap as Peoria. Also, the plant lacked facilities to build a larger size runs, such as the fourteen page sections, and they were becoming in demand. We did not own the building. There was no room for expansion and the equipment was such that there was no point in spending a great amount of money to pre-register. The stereotype room was such that it was impossible to put pre-registry machinery anyway. Therefore, for those reasons, and because the plant had never made any real money, we decided to close it.

Q. Now, prior to the time that Peoria was closed, had any runs of International been shifted to Greater Buffalo?

A. No, sir.

310 Q. And had any runs of Greater Buffalo been shifted to International?

A. Not that I recall.

Q. Now, upon the closing of the Peoria plant, what distribution was made of the runs that had formerly been printed there.

A. Saving transportation, Buffalo started to print about four million of the Peoria total, we started out to print about one million five hundred thousand or thereabouts, but in turn Buffalo gave us approximately four million, four hundred thousand of their own work, so that there was a net gain through the arrangement thereof about one million three hundred thousand.

Q. Now, the work that was given you by Buffalo were runs that were contracted for by Buffalo with the publishers?

A. That is correct.

Q. What would be some of those runs?

A. Herald Tribune would be one; Allentown would be another; Lancaster would be another, and there are a number of small runs.

Q. And you didn't have any contracts with those papers?

A. I had no contracts with with any newspapers at any time.

311 Q. Your only contract was with King?

A. With King Features.

The COURT: Excuse me. I would like to get one thing straight, Mr. Moore. Apparently Wilkes Barre out of this exchange after Peoria closed had a net gain in output by reason of the Buffalo Press sending the work down to them. I didn't get the figure. Did he have a figure?

Mr. MOORE: I will get to that.

The COURT: All right.

By Mr. MOORE:

Q. Production at Peoria was approximately what?

A. Was approximately six million.

Q. Six million?

A. Yes.

Q. You call those fours?

A. Yes.

Q. Would you describe that?

A. A four-page section is four pages of comics. If we have a twelve-page section, we call that three fours. We go on a unit basis of four-page sections.

312 Q. So, there were six million fours per week, is that?

A. That is correct, that is approximately.

Q. Approximately being printed at Peoria?

A. That is correct.

Q. And when Peoria closed approximately four million of the six million were then turned over to Buffalo for printing?

A. That's right.

Q. And approximately around two million—

A. Approximately one million two hundred thousand or three hundred thousand, thereabouts, came to us.

Q. What was the reason for the distribution that way?

A. It was necessary for us through our arrangement with King when we stopped the Peoria plant to absorb the difference in transportation between Peoria and Wilkes-Barre. Now, Buffalo could ship cheaper to those places than we could, therefore, it was better for Buffalo to take it and save some of the transportation. But rather than have us lose that whole amount at one time, Buffalo turned over a lot of their work to us which I think was around four million four hundred thousand.

Q. So, the reason the work was placed in Buffalo was because of transportation?

A. Primarily transportation.

313 Q. And Buffalo, in turn, turned over work to you which you have retained to this date, have you not?

A. Yes, sir.

Q. Now, save for that transfer or exchange which came of runs, has there been any other substantial exchange of runs between Wilkes-Barre and Buffalo?

A. No, sir.

Q. Did there come a time after the acquisition of the International stock by Greater Buffalo that a determination was made by the Greater Buffalo to build a plant at Sylacauga?

A. Yes, sir.

Q. And did you participate in the meetings leading up to that?

A. Yes, sir.

Q. Can you tell us what plans were made for the building and equipping of this plant?

A. We had in mind originally a twenty-five thousand square feet building.

Q. That was International's plan?

A. International.

Q. Prior to 1955?

A. 1955, using smaller presses. But after stock was taken over by Greater Buffalo, it was decided that twenty-five thousand was not large enough and we should have at least

314 forty-five thousand square feet, and it was decided then that Peoria presses or the Wilkes-Barre presses would not be satisfactory for the work which would be done down there. And then we learned about the possibility of buying a press in Baltimore. I told Mr. Koessler about it; he says, "Go ahead and purchase it for the Sylacauga plant."

Q. Now, when you state it was decided, will you state who made those decisions?

A. Which decision is that?

Q. As to the forty-five thousand foot plant.

A. It was made on the advice of Walter Koessler.

Q. And who directed the purchase of this press 2022?

A. Walter Koessler.

Q. What was the purpose of the purchase of this press?

A. To print comic supplements in Sylacauga.

Q. Was it ever intended that that press would be used in Wilkes-Barre?

A. No, sir.

Q. Was there any place for the press in Wilkes-Barre?

A. There was a place for it if there was a need for it, but the need wasn't there.

Q. Now, what were the plans for the press 2022?

A. Greater Buffalo had innovated a five-plate wide press, the first in existence to my knowledge. 2022 press was built in such a manner that it could be changed over to five-plate wide with the aid of Greater Buffalo drawings to be supplied by them and so forth.

Q. To interrupt you a minute, did Greater Buffalo supply all these drawings for the transformation of this press?

A. All the drawings and all the ideas for the transformation of the press.

The COURT: What was this, a new press?

The WITNESS: No, it was a used press, used by the Baltimore News Post for a number of years.

316 Q. Let me clarify that. In this business of printing color comic supplements is it a custom to rebuild presses to some extent?

A. It is the general custom to rebuild presses in the ready print business. To my knowledge, there hasn't been more than three new presses purchased by the ready print companies over the past thirty years.

Q. Had you ever seen a press similar in design to the plans that were evolved for press 2022?

A. I never seen a five-plate wide press except the one which Buffalo built for themselves.

Q. Where was that one located?

A. In Dunkirk, New York.

Q. Were the plans for the rebuilding of Press 2022 patterned on the Dunkirk press?

A. Yes, sir.

Q. After the acquisition of this press, where was it taken?

A. It was taken to a small, old warehouse adjoining our plant at the Sheldon, and we proceeded to erect it there.

Q. And what work was done on it there?

A. There was quite a bit of work done there making it ready for the five-plate width, rebuilding the cylinders so that 317 they could carry a third, half and the six size plates. There was work done on the folder.

Q. And now, that work was done in accordance with plans and specifications furnished by Greater Buffalo, is that correct?

A. Yes.

Q. What about the parts and materials for the changes in the press?

A. Some of the parts and materials were purchased by us directly, later on charged to Greater Buffalo. Some of the parts and materials and the drawings came direct from Buffalo.

Q. Now, the purchase price of the press, who paid for that originally?

A. We paid for the press.

Q. And did you later bill Greater Buffalo?

A. Later billed Greater Buffalo.

Q. And were you paid for it?

A. Yes.

Q. When was the—

The COURT: Excuse me, who of your employes did the labor on the press?

The WITNESS: International Color Printing did the original labor on the press.

The COURT: Was it billed back to Greater Buffalo?

318 The WITNESS: No, the work they did in Wilkes-Barre was in their spare time, wasn't billed to Buffalo.

By Mr. MOORE:

Q. The parts and materials were all billed back?

A. Yes, sir, also the work which we had done by outside concerns such as Hess and Bartlett.

Q. Now, this press was required [sic] when?

A. About the latter part of 1955.

Q. And when was the bulk of the work that was done on it in Wilkes-Barre done on it?

A. Part of the work was done in 1956, but the great bulk of the work wasn't done until 1959.

Q. And when was the press shipped to Sylacauga?

A. In 1960.

Q. About when, do you recall? In July or—

A. June or July of 1960.

Q. At that time was the press completed?

A. No, sir, there was a great amount of work left to be done because, for one reason, when the press was erected in Wilkes-Barre it was erected in an old warehouse and the floor caved in and threw the press out of line. It couldn't be set up.

319 There was a very considerable amount of work to be done rebuilding the press after it arrived in Sylacauga.

Q. Just to cut it short, would you say that more work was done in Sylacauga than was done at Wilkes-Barre?

A. I would say considerably more.

Q. What occasioned the holdup in the work on the press 2022?

A. We decided it was more important to go ahead with the pre-registry work which meant we had to change all of our presses in both Sheldon and Parsons, put in the stereotype machinery, and so forth. For the first two or three years after we purchased the place we had no time to work on the press 2022.

Q. So that for the first two or three years these maintenance employes were working on setting up your pre-registry work?

A. Yes, sir.

Q. At Wilkes-Barre—

A. And the regular routine work.

Q. When that was completed they then proceeded to do the bulk of the work that was done there on 2022?

A. Yes, sir.

Q. Prior to the time the press was shipped to Sylacauga in

July of 1960, did you invoice Greater Buffalo for any
320 work or materials done on it?

A. We started to invoice them about July, but prior to that we had invoiced them for quite a bit of initial work done on the building. In July 1960, we started to invoice them for the press.

Q. After the press was shipped you invoiced them?

A. Yes, sir.

Q. Now, were certain employes from Wilkes-Barre sent to Sylacauga after the press was shipped to complete the work there?

A. Yes, sir.

Q. And how many employes were involved?

A. Six.

Q. Were these the same employes who had worked on it previously?

A. Not particularly. The men who worked on it previously— maybe at one time nearly everybody in the Maintenance Department worked on it. The six employes went down and worked on it for a period of a year or a year and a half.

321 Q. Now, they remained on the International payroll?

A. Yes, sir.

Q. And did you invoice Greater Buffalo?

A. Yes, sir.

Q. For their services?

A. Yes, sir.

Q. And for all of the services?

A. Yes, sir.

Q. For all of the expenses involved in keeping them there?

A. Yes, sir.

Q. And were those invoices paid?

A. Yes, sir.

Q. Now, you mentioned other work with reference to the Sylacauga plant. Was there other work done in Wilkes-Barre?

A. No. I meant by that work which was done by contract which they billed us as a matter of expediency or accommodation and we billed Buffalo.

Q. Those invoices were billed currently?

A. Yes, sir.

Q. Now, let me ask you, were substantial resources of Wilkes-Barre ever used in developing Sylacauga?

A. No, sir.

Q. And has International been paid for all of its out-of-pocket expenses in connection with Sylacauga?

A. Yes, sir.

Q. Now, directing your attention to the King contracts or the King business that is sent to Wilkes-Barre for printing currently, is there a substantial amount of that business which is printed for King at the order of King, for delivery to Southeast?

A. Yes, sir.

Q. And how was the transportation handled by International on that business?

A. We pay the transportation and then we bill King Features and King Features pays us in most cases, maybe one or two C.O.D., but in most cases we pay the transportation and King Features pays us.

Q. Now, are you in general familiar with some of the transportation differentials between Sylacauga and Wilkes-Barre for shipment to the Southeast?

A. Generally so.

Q. Well, take for an example, do you print for King a supplement for delivery in Birmingham?

A. Yes, sir.

Q. And do you know approximately how much it costs to ship that supplement from Wilkes-Barre to Birmingham?

A. Approximately \$1.25 to \$1.40 a hundred.

323 Q. A hundred pounds?

A. A hundred pounds.

Q. And what is the supplement, what does the supplement order weigh each week?

A. The Birmingham order would run in the neighborhood of 30,000 pounds.

Q. Do you know approximately what it would cost to ship that same supplement from Sylacauga to Birmingham?

A. Approximately twenty to twenty-five cents.

Q. So there would be a differential in the transportation rate there of approximately \$300.00 a week?

A. Yes, sir.

Q. Now, do you know of any way in which the efficiency of your operation at Wilkes-Barre could be increased to the extent that you could meet that transportation differential?

A. No, sir.

Q. And would that same situation prevail in various other jobs sent to the southeast?

A. Not to that total extent. One way or the other the savings would be twenty-five to fifty cents a hundred.

Q. Now, from your experience in this business, do you have an opinion as to what effect with respect to business the 324 erection and operation of a printing plant in the southeast area would have on the business of the International?

A. I told our people as far back as seven years ago that ultimately and inevitably there would be a plant in the south and, as a matter of fact, I am sorry to see it, we would 325 lose work.

Q. In the absence of any restrictions, you would expect to lose work to Sylacauga, if that opened up?

A. Yes, sir.

Q. Well, now, a shift of four million fours from Wilkes Barre to Sylacauga will result in a decrease in the Wilkes Barre production?

A. Yes, sir.

Q. And would it result in a decrease in the Wilkes-Barre products?

A. Yes, sir.

Q. Do you think you would still operate profitably?

A. That would be a matter of—relatively speaking, we wouldn't make as much money as we were making now. If we cut our production by fifteen percent, we might reduce our profit by forty percent.

Q. But you still could operate at a profit?

A. I still think we could operate at a profit.

Q. Now, have you had any discussions or made any plans to meet this problem if it should eventuate?

A. I have talked to Walter Koessler about it on various occasions. I know that he has been in touch with newspapers in our geographical area, hoping to fill in the volume we will lose.

Also they have built up a very profitable, substantial 326 commercial business over the past five years. They seem to have built up a know how in the commercial business which is equal to what they had in the comic printing business.

Q. Let me ask you about this commercial business. Has commercial business been placed at Wilkes Barre by Greater Buffalo?

A. Yes, sir.

Q. How recently?

A. As recently as last month—this month.

Q. Did International ever have any of that business prior to the time that Greater Buffalo acquired its stock?

A. Occasionally. Over the period of the years we did one or two jobs for local newspapers, but that was the extent of our commercial business.

Q. Well, did it approximate in any way the —

A. No, sir.

Q. —Business you are getting from Greater Buffalo?

A. No, sir.

Q. Now, is International equipped with its own personnel that it now has to go out and get commercial business?

A. I would say no. The commercial business involves 327 a very intricate knowledge of typography, engraving, binding and stitching, all of which knowledge Buffalo has and equipment for which Buffalo has and which we do not have, but through working with Greater Buffalo I feel they could handle our commercial problems for us and build up our commercial business.

Q. The fact is they have done that?

A. They have done that.

Q. Was there some problem of engraving, too, that you get into with commercial business?

A. Engraving, typography, binding, stitching, the use of rubber, none of which we are familiar with.

Q. Now, do you know whether or not there are in the geographic vicinity of Wilkes Barre, newspapers that print their own color comic strips?

A. Yes, sir.

Q. And do you know whether or not, if those accounts were obtained, that the loss of runs would be replaced?

A. The particular accounts we have in mind would replace the runs which we may lose to King Features work in the south.

Q. Now, on this material that you sent to Sylacauga, who decided on what you would charge Greater Buffalo for 328 that?

A. I did.

Q. Anybody from Greater Buffalo ever tell you what to invoice them for?

A. No, sir.

Q. Was any question made about the amount of the invoice?

A. No, sir.

Q. And is the same thing true of the charges made on press 2022?

A. Yes, sir.

Q. Now, over the past five years, as you have testified, Wilkes Barre, the International plant, has received certain equipment and material from Greater Buffalo?

A. Yes, sir.

Q. And Wilkes Barre, in turn, has shipped some material from its plant to Greater Buffalo?

A. Yes, sir.

Q. And those invoices are sent and paid each way, are they not, on that material?

A. With the exception of two reels about which there is some question and some confusion. Other than that, it has all been paid.

Q. Well, right now there is some equipment in the possession of International that is the property of Greater Buffalo?

329 A. That is correct.

Q. And those are reels, you say?

A. Parts for reels.

Q. Since the entry of the restraining order, you have been unable to ship those?

A. That is correct.

Q. Now, does International require certain parts from Greater Buffalo?

A. At the particular moment, there is several things we need, and as time goes on we will need more, because Buffalo is the only one who can make the particular parts we have in mind.

Q. Now, directing your attention, can you describe one of the particular parts?

A. Plate splitting machine, which we need very badly, and which Buffalo can provide, and which is impossible to buy anywhere else.

Q. Well, now, this plate splitting machine is used in connection with your pre-registry process?

A. That's right, in our stereotype equipment we now have a plate splitting machine. It's out of order and becoming worn, and eventually, in the not too far distant future we will need another one to replace it.

330 Q. And the plate splitting machine you have now was designed and built by Greater Buffalo, wasn't it?

A. Yes, sir.

Q. And your company doesn't know how to build one?

A. No, sir.

331 Q. Now, over the past five years has International acquired certain secondhand parts and material and equipment for its use and Greater Buffalo's use?

A. Yes, sir.

Q. Can you give us an example of that?

A. We bought approximately forty-eight press units from Hearst Newspapers which we hope to use partly ourselves, we intended eventually for Buffalo to use part of it, they would pay us, but mostly, most of the units stand in our warehouse now, and it is impossible for Buffalo to take any of them out for their use.

Q. Do you have any possible use for all of them?

A. No, sir.

Q. It has been called to my attention; do you recall at that time that press 2022 was purchased from the Baltimore paper, that also there were purchased some Sheridan machines?

A. They were purchased from another source.

Q. And they were purchased by Greater Buffalo?

A. Purchased by us and billed to Greater Buffalo.

Q. The same way you billed the press?

A. That is right.

Q. And those Sheridan machines never even went into your plant, did they?

332 A. Never, no, sir.

Mr. MOORE: If Your Honor will indulge me for a minute.

The COURT: Yes.

By Mr. MOORE:

Q. Just one or two more questions and I will be through, Mr. Gorman. In re-building press 2022 International was in effect acting as a machine shop on the part of the work they did?

A. Yes, sir.

Q. Acting in accordance with plans and specifications furnished?

A. Yes, sir.

Q. And using personnel who at the time were not preoccupied with the work of International?

A. Yes, sir.

Mr. MOORE: You may ask.

The COURT: Where did the Sheridan machines come from?

The WITNESS: They came from the Keystone Bindery in Wilkes-Barre, a plant which went out of business.

333 Mr. FELDMAN: May we have a lunch break now? We have a bunch of documents here we would like to go through before commencing on cross examination.

The COURT: Yes. Now, I want to advise all parties, however, that the time to devote to this taking of proof is limited, as I have already outlined to you, so we must keep it brisk. Now, if it is critical for you, we will recess until 2 o'clock and I hope that we will have a very full afternoon without breaks.

(Thereupon at 12:20 p.m. a recess was taken until 2 o'clock p.m.)

334 (Proceedings resumed pursuant to recess, commencing 2:00 p.m.)

Mr. MOORE: Your Honor, I have one or two more questions of Mr. Gorman.

The COURT: Yes.

Mr. MOORE: Mr. Gorman, please.

JOSEPH J. GORMAN, having been previously duly sworn, resumed and testified further as follows:

DIRECT EXAMINATION

By Mr. Moore (Continued):

Q. Mr. Gorman, I think you testified, did you not, that over this long period of years you had never solicited from any newspaper the printing of color comic supplements?

A. That is correct.

Q. You never supplied any newspaper with color comic supplements other than through your contract with King?

A. Except the two that I mentioned back in 1925.

Q. Yes. Now, I think you have stated from time to time, have you not, in various conversations with unions and other people that Greater Buffalo was a competitor?

A. Yes, sir.

335 Q. Now, what did you mean by competition in that sense?

A. I meant we were competitors productionwise, so that I could supply King Features—so that I could supply

them with a price which would enable them to compete with other plants including Greater Buffalo.

Q. Did you consider, over these years, that your competition with Greater Buffalo arose solely out of your relationship with King?

A. That is right. We had no direct contracts ourself.

Q. Now, with reference to the work placed with you by King, printing of supplements for various newspapers, did you over these years ever exercise any control over those contracts?

A. None whatsoever.

Q. Did you have the right in your agreement with King to say where those contracts, where those supplements should be printed?

A. No, sir.

Q. Reverting back to International Color Printing Company prior to 1955, when it was owned by the Govin family, were dividends paid over the twenty-five or thirty years that the Govins owned this business?

336 A. Possibly \$100,000 all told.

Q. Over the thirty-year period?

A. Yes.

Q. Did Mrs. Govin Senior derive a salary from the company?

A. No, sir.

Q. Did Mrs. Scofield derive a salary?

A. No, sir.

Q. Did Mr. Govin draw a salary?

A. At various periods during the thirty-year period when he lived in Wilkes-Barre he drew a salary.

Q. What was the extent of that salary?

A. Approximately \$7,000 per year.

Q. Did he draw a salary after he left Wilkes-Barre?

A. No, sir.

Q. When did he leave Wilkes-Barre?

A. He left first in 1925, came back in 1935. He left again in 1945 and he hasn't been back since.

Q. Now, from your knowledge of this business would you say that the physical plant of International Color Printing Company was in better condition in 1960 than it was in 1955?

A. I think it was in better condition because it was producing twenty-five per cent more work per press hour.

337 Q. Were the facilities more efficient?

A. By reason of the fact that we had preregistry,
yes.

Q. Was it making more money?

A. Yes, sir.

Q. And was it printing at Wilkes-Barre in 1960 more runs
than it printed at Wilkes-Barre in 1955?

A. Yes, sir.

Mr. MOORE: You may ask.

By Mr. FELDMAN:

Q. Mr. Gorman, I believe you testified earlier today that you were not concerned with the prices King Features charged newspaper customers, is that correct?

A. I testified that I knew nothing about them.

Q. I will accept that. Now, during the time that you had contract arrangements with King Features did these contract arrangements cover the charges which you made of King Features for supplements to be furnished particular newspapers?

A. Will you ask that question again?

Q. Yes. In your contractual relationship with King Features were the prices you were to charge King—were they covered in such contracts?

A. Generally speaking for a certain—for a bulk it was covered by the general contract, but when additional new business came up, then we would quote special prices to fit the case.

Q. Did there ever come a time when King Features requested you to absorb some of the transportation costs or reduce the price which you had previously agreed upon?

A. Yes, sir.

Q. And when such requests were made did King 339 Features indicate to you the competitive situation?

A. They indicated definitely that there was a competitive situation, but never did they tell me in detail what the competitive situation was.

Q. Did they ever indicate to you who was competing for the particular account involved?

A. Yes, sir.

Q. Did there ever come times when International reduced the price or absorbed part of the transportation costs?

A. Yes, sir.

Q. Now, I believe you testified earlier that you made the decisions in regard to the running and operation of International, is that correct?

A. Yes, sir.

340 Q. Now, you participated in the negotiations which preceded International's contract, the formal signing of a contract with King, is that correct sir?

A. Yes, sir.

Q. And who made the decision to enter into such negotiations at International?

A. I did.

Q. Prior to entering into such negotiations was there anything which prevented you as general manager of International from going out yourself or through salesmen and soliciting newspaper accounts?

A. At all times we were under contract which provided that we could not sell to anyone other than King Features.

Q. Did that contract ever come to an end?

A. The contract never came to an end. There was always an overlapping until finally—in fact, there was never a time when the contract actually came to an end.

Q. Well, how long was this contract?

A. For one period it was for three years, another time it was for two years, and then for a period of possibly fifteen years it was something on a six-month's notice of discontinuance.

341 Q. Well, was there anything which prevented you from terminating after six months?

A. No, sir.

Q. And so International could have gone out and solicited itself the particular newspaper runs?

A. Provided we had the finances to carry us through the period when we were soliciting.

Q. Well, regardless of the reason, there was nothing which disabled you from going out, is that correct?

A. If we cancelled the contract, no, sir.

Q. Now, during the period from 1926 to 1955 did International ever file a petition in bankruptcy?

A. No, sir.

Q. Did it ever file a petition in reorganization?

A. No, sir.

Q. How many employees did International employ during that period?

A. I can't answer that definitely. It varied from time to time and grew from say twenty employees at the beginning up to approximately three hundred twenty-five employees today. I can't tell you how many employees we had on a stated time.

Q. Well, do you know approximately how many were in the employ of International at the time it was acquired by Greater Buffalo?

342 A. No, sir. I can't tell you that.

Q. Any approximation? Was it two hundred, three hundred?

A. More like three hundred.

Q. And were these people skilled workers?

A. Yes, sir.

Q. During the period from 1926 to 1955 did International always meet its payroll?

A. Yes, sir.

Q. And during that period did you receive a salary, sir?

A. Yes.

Q. And were you always paid during that period?

A. Yes, sir.

Q. Mr. Gorman, I show you at this time the Government's reply Exhibit number 9 and ask you whether you wrote that letter on or about December 5, 1957?

A. Yes, sir.

Q. Now, I believe you testified earlier today as to the liabilities at International which exceeded the assets at the time of its purchase by Greater Buffalo?

A. Yes, sir.

Q. Do you recall that, sir?

343 A. Yes, sir.

Q. And what was that amount, sir?

A. Approximately a hundred thousand dollars.

Q. Will you please read aloud this last paragraph?

A. "At the time Greater Buffalo took over I.C.P. Company current liabilities exceeded current assets by approximately \$30,000.00. As of now current assets exceed current liabilities by approximately \$60,000.00, so there has been an improvement here of about \$90,000.00, in the two year period. At the beginning of 1955, the excess of all assets over all liabilities before depreciation was \$1,340,351.90. As of now the excess is \$1,645,149.54 an improvement of about \$300,000.00 over the three year period."

Q. Now, were the statements contained in this letter correct at the time you wrote this letter on or about December 5, 1957?

A. The \$30,000.00 was an error because I think that at the time I wrote that letter I picked up a July, 1954 balance sheet rather than a 1955 balance sheet.

Q. Did you subsequently write a letter to Mr. Koessler pointing that out?

A. I never realized that there was any error or any
344 mistake until this proceedings.

Q. Now, I believe you testified earlier today that International and at least you had tentative plans prior to its acquisition by Greater Buffalo Press to build a plant in the Southeast, is that correct, sir?

A. Yes, sir.

Q. In regard to the Sylacauga plant, what, if anything did you do prior to the acquisition of International?

A. I visited the newsprint company at Coosa River regarding newsprint. I talked to some of the people in Sylacauga and I visited various other towns where I thought a location might be possible.

Q. How long did you spend in the Sylacauga area, sir?

A. That would be very difficult to say right now.

Q. Well, was it a month, was it six months, a year?

A. At no time more than two days.

Q. Now, when you went down and visted the Coosa River Newsprint Plant did you check the time it took to go from that plant to the various cities around there?

A. Yes, sir.

Q. And did you rent a car at that particular time?

A. I think I did.

345 Q. Did you look at the living conditions in the area at that time?

A. I probably checked on it, I don't remember particularly.

Q. Did you talk to local people, namely the Chamber of Commerce and other people?

A. Yes, sir.

Q. Now, at any time prior to the acquisition of International by Greater Buffalo, did International make any arrangements to get newspaper print in the south?

A. Yes, sir.

Q. Will you tell us about those arrangements?

A. I visited the Coosa River Newsprint Company in the middle of 1954, and was advised if a plant were established they would supply us with newsprint at a certain price. At the same time they told me they had, previously offered the same newsprint, the same amount, to other ready print companies. We agreed that we might go ahead with the plant provided we could get the newsprint.

Q. In regard to getting the newsprint, was any contract entered into between the Coosa River Newsprint Company and International, or anyone on behalf of International?

346 A. Yes, King Features or Hearst Publications, I don't know which—how you would express it.

Q. Prior to the acquisition of International by Greater Buffalo, was International assured of newsprint being supplied in that area?

A. Yes, sir.

Q. This was pursuant to the contract, is that right, sir?

A. Yes, sir.

Q. Did there come a time when you sent three men down to the Sylacauga area from International?

A. Yes, sir.

Q. Who were these men?

A. Tom Brennan, Roger Zadus, and Joe Clinton, if I remember correctly.

Q. How are these people characterized at International; as employees, or part of management?

A. One was a foreman of the machine shops, one was the purchasing agent, one was the assistant production manager.

Q. Who was the assistant production manager?

A. Joe Clinton.

Q. What was Mr. Brennan's function at International?

A. Purchasing Agent.

Q. And Mr. Zadus?

347 A. Head of the machine shop.

Q. How long did these people spend in the southeast, do you recall?

A. I can't answer that, a few days.

Q. Did they, to your knowledge, talk to people in the area there?

A. Yes, sir.

Q. What area did they cover, do you recall?

A. They went to Birmingham, and possibly one or two other towns, I don't recall.

Q. Is Birmingham near Sylacauga?

A. About fifty miles from Sylacauga.

Q. Did they talk to any people at Sylacauga?

A. Yes, sir.

Q. Did they speak with any contractors or people who would furnish supplies in the event a plant were to be built?

A. I don't know.

Q. Did you receive any memorandum from Mr. Clinton or anybody else?

A. I possibly did, I don't recall it.

Q. Mr. Gorman, I show you a memorandum dated January 24, 1955, which bears the typed name Joe Clinton on the back, and it states at the top, "A memorandum to Mr. Gorman

(6 extras)". I ask you whether this is a memorandum
348 you received from Mr. Clinton in regard to the trip you just described by the three employees of International?

A. I think it was, or is.

Q. Were there any other memoranda sent to you, Mr. Gorman? Were there any other memoranda sent to you in regard to that trip?

A. Possibly.

Q. In addition to this memorandum, did you have any oral discussions with Mr. Clinton and the gentlemen upon their return?

A. Again, I say possibly.

Q. Now, Mr. Gorman, do you recall stating in the affidavit you submitted in connection with this motion, on Page 5, that at the time Greater Buffalo acquired International, you or International had virtually abandoned any plan to build a plant at Sylacauga?

A. Yes, sir.

Q. Do you recall now when Greater Buffalo acquired International?

A. I think it was in June of 1955.

Q. I show you, Mr. Gorman, Exhibit Number 6 in the Government's reply affidavit, dated May 13, 1955, and ask
349 you whether this is a copy of a letter you wrote on or about that date to Mr. Sternberger of the Hearst Corporation?

A. I think it is.

350 Q. Is there any question about it in your mind?

A. There can always be a question.

Q. But you—

A. Being a carbon copy, there is always a question, but I think it is my name. It looks like something I might have written.

Q. Who is Mr. Sternberger?

A. Mr. Sternberger is the purchasing agent in charge of newsprint for Hearst Newspapers.

Q. And was he the one who arranged the contract between the Hearst Corporation and the Coosa Plant in regard to supplying International with newsprint in the event the plant was to be built down there?

A. He represented Hearst in the arrangements.

Q. Now, will you please read the last sentence aloud?

A. (Reading:) We are fairly certain that we will have one press ready in March, the three presses by July 1, and we are fairly certain we will need about four thousand tons between July 1 and January 1, 1957, but as I said before, we cannot be absolutely certain when the presses will be ready.

Q. Now, when you wrote this letter on or about May 13, 1955, did you virtually abandon all plans to build a plant in the Southeast?

351 A. At about the same time that I wrote that letter, I wrote a letter to Mr. Nicht which was read here this morning—

Q. I want to know—

Mr. MOORE: Let him answer the question. I move to strike it out. Don't interrupt him.

Mr. FELDMAN: I think I am entitled to a yes or no answer.

The COURT: Answer yes or no, had you abandoned it at this time?

The WITNESS: No, sir.

By Mr. FELDMAN:

Q. When again did the sale of International take place?

A. June of 1955.

Q. Now, Mr. Gorman, do you recall stating in the affidavit you submitted in connection with the motion now before this Court that International prior to its acquisition did not have the financial resources to build a plant in the Southeast?

A. Yes, sir.

Q. Now, prior to the acquisition of International by Greater Buffalo, did you or anyone on behalf of International
 352 ever go to a bank and seek to make a loan?

A. With a \$100,000 deficit—

Q. I think I am entitled to a yes or no answer—

Mr. MOORE: No. Now, let me just be heard, Your Honor. If he wants a yes or no answer to that question, I think perhaps he is entitled to it but he ought to let the witness explain it. When he asks a question in the manner it is testified that he has got \$100,000 deficit, no long-term contract, and does he go to a bank and ask them for a million dollars, if he wants a yes or no to that question—

The COURT: Well, will you answer that yes or no? I will give you ample opportunity to answer it in your own way later.

The WITNESS: Will you ask that question again, please?

By Mr. FELDMAN:

Q. Prior to the acquisition of International by
 353 Greater Buffalo, did you or anyone on behalf of International go to a bank and attempt to secure a loan for financing a plant in the Southeast?

A. No, sir.

Q. Now, prior to the acquisition of International by Greater Buffalo, do you know whether an announcement was made by the people in Sylacauga that International had picked a site, namely, the Sylacauga area for its plant?

A. I don't think they did. I don't recall that they did, and if I may explain, I don't think they could possibly have done so because at that time we hadn't definitely picked Sylacauga.

Q. Now, do you recall at any time prior to the acquisition of International by Greater Buffalo of Sylacauga of the people at Sylacauga ever announcing that International had picked a plant?

A. They may have made an announcement. I wouldn't know about that.

Q. Do you recall them ever consulting you prior to ever making any announcement?

A. No, sir.

Q. Now, how much did International pay for press 2022?

A. \$32,500.

Q. Where did you buy that press? Strike that out.
 354 Who on behalf of International purchased the press for Greater Buffalo?

A. The arrangements were made by Tom Brennan.

Q. And from where did you make the purchase?

A. From the Baltimore News Post.

Q. And who contacted the Baltimore News? Mr. Brennan?

A. Mr. Brennan.

Q. Did Mr. Brennan go down to Baltimore and look at the press prior to the time it was purchased?

A. I think he did.

Q. Did anyone ever go down to Baltimore and look at that press, sir?

A. Yes, sir.

Q. Who?

A. I did, Roger Zadus, possibly one or two others. I do recall I went down there and Roger Zadus went there.

Q. After the press was purchased, who made the arrangements in regard to packing it and shipping it to the Wilkes-Barre plant?

A. I don't remember definitely but I think possibly it was Roger Zadus.

Q. And when the press arrived in Wilkes-Barre, did any work have to be done in the place where the press was eventually set? Would beams have to be set and other work
355 done in connection with it?

A. I think you put a concrete floor in it. I am not sure definitely what work was done. I can't answer that question.

Q. And to the best of your recollection who worked in setting up the place for the press 2022?

A. Setting up the place? You mean rebuilding the floor?

Q. Yes.

A. If it was a concrete floor, I am not sure about it, but it would have been done by some outside contractor.

Q. And was International reimbursed for the money expended in that connection?

A. No, sir, because the floor would be good for all the time after that.

Q. Now, after the press arrived and work was done on it, who supervised the actual work done in connection with equipping and setting up that press at International?

A. Roger Zadus carried out the instructions which came from Buffalo.

Q. Now, did Robert Zadus to your knowledge ever have discussions with people at Buffalo and make suggestions in regard to how press work should be carried on?

356 A. He may have but I don't know that.

Q. Did Robert Zadus report to you?

A. Yes, sir. May I qualify that?

Q. Yes.

A. He didn't report to me very often.

Q. Well, were you informed as to the progress being made on the press?

A. Not particularly.

Q. Now, prior to press 2022 arriving in Wilkes-Barre, had International made any plans in regard to relocating material for the southern plant which was going to be constructed?

A. Prior to the time of my position with Greater Buffalo, we had talked about moving presses from Parsons to the Sheldon and possibly moving Peoria presses to the south eventually and also some moving of stereotype equipment but most of that was eventually moving Parsons presses to Wilkes-Barre regardless of what was done in the south.

Q. And was any money expended in that connection?

A. Yes, sir.

Q. How much, do you recall?

A. No, sir.

Q. Was it over \$10,000?

357 A. I don't know.

Q. Now, after the purchase was made of press 2022, do you recall how that press was carried on the balance sheet of International Color Printing Company?

A. Under "Other Assets".

Q. Was it listed under accounts receivable at all, sir?

A. In July of 1960 it was listed under accounts receivable.

Q. That was the first time, is that correct?

A. Yes.

Q. And when did the press arrive at Wilkes-Barre, sir?

A. About 1956. We were told at that time that we would eventually be reimbursed.

Q. But, anyway, from 1956 until July 1960 it was not listed on the balance sheet of International as an accounts receivable, is that correct, sir?

A. That's right.

358 Q. When was International paid for press 2022, was it before or after the commencement of this law suit?

A. Prior to the commencement of this—

Q. Motion?

A. Prior to the commencement of this motion.

Q. It was after the commencement of this law suit, is that right?

A. I don't know when the law suit started.

Q. Do you remember the date?

A. About January of 1961.

Q. When was International billed for this press?

A. We billed Buffalo starting in July—when was International?

Q. When was International billed for the press?

A. Billed for the press?

Q. That is right, when did International bill Greater Buffalo for the press?

A. Starting in July of 1960.

Q. When you say they were billed for the press, does that include all the labor and services and parts which had been purchased by International in connection with the press?

A. All except the time it took for putting the press up. We were using men we didn't have on regular work.

359 Q. What is that amount again, sir?

A. I don't know.

Q. Was it over one hundred thirty thousand dollars?

A. The total amount?

Q. The total amount.

A. One hundred thirty thousand dollars.

Q. Did International ever receive any interest for that amount from Greater Buffalo?

A. No, sir. I might point out, all the time we were waiting, that one hundred thirty thousand dollars was due us, we had more money than that on deposit.

Q. I am talking about one hundred thirty thousand dollars.

A. There was no interest paid on it.

Q. When was the great bulk of the work done at International on press 2022?

A. My recollection, my best recollection is that it was 1959.

Q. Mr. Gorman, I show you Government's Exhibit 15A, which is-dated December 5, 1957, and entitled, "Cost of Unusual Repair Work in Progress or Completed during the Period

1-1-55 to 10-31-57. 34 months." It consists of two pages, and
on the second page it has in the right hand corner
360 "Prepared by J.J.G.", underneath it, the date, 12-26-57.
I ask you whether you prepared these two sheets?

A. I definitely didn't prepare them.

Q. Did you read them at all, sir?

A. I don't remember.

Q. You don't remember that at all?

A. No.

Q. Mr. Gorman, referring back to the heading on the second page, "prepared by J.J.G.", does this refresh your recollection at all as to whether or not you prepared this document?

A. I wouldn't be able to prepare that.

Q. Was it prepared for you by anyone?

A. Possibly by someone else. Personally, I wouldn't be able to prepare it.

361 Q. Now, referring to the first page, under the heading "Job Title" which says "Press 2022" and then going to the righthand column which says "Total Job Cost to 10-31-57" will you state the amount which appears there?

A. \$110,374.58.

Q. Will you please tell us again the total amount which Greater Buffalo paid for press 2022?

A. \$130,000.00 up till—this year.

Q. Now, do you still say that most of the work on press 2022 was done in 1959?

A. To the best of my knowledge, yes. That is my recollection. It was 1959. There was some work done earlier than that, but exactly how much I don't know.

Q. And you still say so and it is still your testimony with Exhibit 15-A before you, is that correct?

A. Yes, that is correct. That is my recollection.

Q. Now, prior to 1935, how many maintenance men did International have in its employ? I am talking about the period.

A. About twelve prior to 1955.

Q. And at the time of the acquisition of International how many maintenance men did it have?

362 A. Still about twelve.

Q. Now, did all these people, namely—or twelve people at some time or other work upon the construction or erection of press 2022, at one time or another?

A. I couldn't answer that definitely. Possibly some of them did. Not possibly. All of them did. I can't say definitely how the work was divided.

Q. Am I correct that you testified earlier today that the people who worked on press 2022 did so in their spare time?

A. What I mean by "spare time" is we had six more men in 1959 than we had before 1955 and after the preregistry job was done, then we didn't have any immediate jobs. So we had the crew there anyhow, so we used them on that press.

Q. Referring now to 1957 and to document 15-A which I just showed you, in that period, namely 1957, how many maintenance men did International have in its employ?

A. The number of men increased gradually from 1955 up till 1960. We increased by about five men. How many we had at a given period in that five-year period, I don't know.

Q. But at least by 1957 five more men or additional
363 men were not employed by International, is that correct, sir?

A. What was that again?

Q. By 1957 the full total of five men or additional men were not employed by International, is that correct?

A. I don't know whether the five men were there in 1957 or whether some of them came later.

Q. Now, I believe you started to explain what you meant by "spare time". Do you mean by "spare time" that these people or maintenance men worked on press 2022 outside of their regular working day?

A. No, sir.

Q. In other words, all this work was done during their regular working day, is that correct, sir?

A. Yes, sir.

Q. And during that period of time was there any other maintenance work which these people engaged in?

A. Yes, there was a considerable amount of other maintenance work.

Q. At International is there always maintenance work?

A. Yes, sir.

Q. Available?

A. Not enough to keep eighteen men busy at the same time.

Q. But there is always maintenance work available
364 is that correct, sir?

A. Yes, sir. When all the presses are running, it is impossible for all of them to work.

Q. Now, did the men who were employed in constructing press 2022—were they informed by you or anyone on behalf of International that they were working on this press in their spare time?

A. No, sir.

Q. They knew nothing about that at all?

A. No, sir.

Q. Did you tell anyone the men were to work on the press only in their spare time?

A. We told them that had to come secondary, that was secondary to anything else we were doing.

Q. Whom did you tell that to?

A. Tom Brennan.

Q. What about Mr. Zadus?

A. Well, he in turn, I presume, told Zadus. I had very little contact with Zadus direct.

Q. During this period of time did International farm out any work, maintenance work or machine work?

A. Yes, sir.

Q. And what company did it farm the work out to?

365 A. Probably several companies, but I remember one in particular, Hess & Barker, probably several other companies.

Q. Where is Hess & Barker located?

A. Philadelphia.

Q. What work did they do for International?

A. They did the opening up of the cylinders to provide for the five-plate wide press and what else they did in particular I don't know.

Q. No, who made the arrangements with Hess & Barker to work on press 2022?

A. We did.

Q. And prior to that time had you had dealings with Hess & Barker?

A. For many years.

Q. Now, I believe you testified earlier today that six men went down to Sylacauga and worked on press 2022, is that correct, sir?

A. Yes, sir.

Q. Do you know whether an attempt was made to hire local machinists or maintenance men in the Sylacauga area?

A. I don't believe so.

Q. And where did you get that information?

A. From Joe Clinton.

Q. Now, when these men went down to Sylacauga,
366 who was in charge, who was their supervisor?

A. Roger Zadus.

Q. And was Roger Zadus at that time in the employ of International?

A. Yes, sir.

Q. And was there anyone down there above Roger Zadus?

A. Yes, sir, Joe Clinton.

Q. Was Joe Clinton in full charge down there?

A. Yes, sir.

Q. Whom did Joe Clinton report to?

A. He reported to me in the first instance, but then he started reporting directly to Buffalo.

Q. Now, did Joe Clinton consult with you during the period of time he was down there?

A. Very little.

Q. Well, didn't he write you memoranda as to the progress being made?

A. Probably from time to time, but he didn't consult with me because I knew nothing about the operation.

Q. What about the stereo-type equipment? Did you have discussions with him about that?

A. I may have had briefly, but not to any extent.

Q. But did you offer him any advice at all in regard to the stereo-type equipment?

A. If I did, I was very foolish because he knew more
367 about than I did.

Q. Did you ever have any discussions with him whereby it was decided that certain equipment was to leave International and be sent down to Sylacauga?

A. We sent certain small parts over and above the press to Sylacauga.

368 Q. And these parts you just spoke about, were they sent after discussions you had with Joe Clinton?

A. Probably.

Q. How long was Joe Clinton down at Sylacauga?

A. About eighteen months, I guess. I am only guess-

Q. During that time, was he on the payroll of Interna-

A. During the first few months.

Q. By "few", how many months?

A. I don't know. I can't answer that definitely.

Q. Would it be three months?

A. Possibly, possibly longer than that. I don't know
remember.

Q. When did he first go down there?

A. I think about a year ago last June. I don't know po-

Q. When the six maintenance men went down to Syl-
was he then on the payroll of International?

A. Yes, sir.

Q. And was International repaid for his services?

A. No, sir, not until later.

Q. When was International repaid?

A. Possibly about a year ago. I can't answer definite-

Q. Was that after or before this law suit wa-
369 menced?

A. I think it was before.

Q. You don't recall how soon before?

A. No, sir.

Q. Now, Mr. Gorman, you stated, did you not, a little
ago that International never had any competitors, is that
prior to the acquisition by Greater Buffalo?

A. Price wise, we never had any competitors. We were
ing directly with King. King had all the contracts.

Q. Prior to the acquisition of International by G-
Buffalo, did you ever visit any independent color comic
ing plant?

A. Many times.

Q. And did you report your findings or observations to
Features Syndicate?

A. Yes, sir.

Q. Will you enumerate some of the plants you visited?

A. I think I visited all of them.

Q. Well, suppose you name them.

A. Southern Color; Wilmington—Star Color Printing
pany, Wilmington; Acme at San Bernardino; Eastern
Printing Company of Waterbury. I don't know whether

named them all or not. By the same token, we were
370 visited by people from those plants.

Q. Now, in regard to the names you mentioned, would these be significant independent color comic supplement printers that you know of?

A. Yes, sir. You are asking me about these names; Greater Buffalo was a significant color printing company.

Q. When you visited these plants, did they admit you freely through the plant?

A. Yes. I had lunch with Mr. Smith on a number of occasions at his plant. I had lunch with Johnny Enright in Waterbury.

Q. What was the story with Greater Buffalo?

A. I didn't know Koessler.

Q. Did you ever visit the plant prior to the acquisition?

A. Back thirty years ago.

Q. In other words, thirty years prior, or about 1925 you visited the plant, is that correct, sir?

A. Thirty years is not 1925.

Q. From 1955?

A. I visited some time in the 30's.

Q. Some time in the 30's you visited the plant?

A. Yes, sir.

Q. You never visited the plant of Greater Buffalo
371 since some time in the 30's, is that correct?

A. No, sir.

Q. When did you visit the plant—I will withdraw that—from some time in the 30's until June 1955, did you visit the plant of Greater Buffalo?

A. I have no recollection of so doing.

Q. Now, when did you visit Southern Color Print, do you recall?

A. On various occasions. Just when, I don't know.

Q. Well, the last time, do you recall?

A. I don't know.

Q. Was it in the last ten years?

A. Yes, sir.

Q. What about Star, was that in the last ten years?

A. Yes, sir.

Q. What about Acme?

A. Yes, sir.

Q. Now, who handles the labor negotiations on behalf of International?

A. I do.

372 Q. How many unions do you have representing the employees of International?

A. Five.

Q. And in the past—

A. Six.

Q. Six?

A. Yes.

Q. Have you sat down with the representatives of the various unions and negotiated the labor contracts?

A. Yes, sir.

Q. In the course of those negotiations, do you recall ever having stated to these people that International had competitors?

A. Yes.

Q. Now, Mr. Gorman, do you recall in your affidavit, which you submitted in connection with this motion that you stated on page 15 that International was a sub-contractor?

A. Yes, sir.

Q. Prior to that time that you made this affidavit, do you recall ever on any other previous occasion describing International as a sub-contractor?

A. No, sir.

Q. Was the idea to use the word "sub-contractor", 373 yours or was that suggested to you, sir?

A. Possibly, it was suggested.

Q. Going back one moment, Mr. Gorman, I show you Government's Exhibit 10A, which is dated April 22nd, 1955, as part of the Government's case, and ask you whether this is a copy of a letter sent by you to Mr. Jack Nealeans, Secretary of the Chamber of Commerce at Sylacauga, Alabama?

A. Yes, sir, I think it is.

Q. Your answer is yes, is that right?

A. Yes.

Q. Will you please read the first sentence of that letter?

A. "I am writing you pursuant to our telephone conversation, and as I have told you, we have definitely selected Sylacauga as the location for our southern printing plant and that you should go ahead with the purchase".

Q. Does that refresh your recollection as to whether or not anyone at Sylacauga announced that International had picked the Sylacauga area as its site for its southeastern plant?

A. I don't know of any announcement.

Q. At any rate, this document does not refresh your recollection?

374 A. No.

Q. Now, Mr. Gorman, I believe you testified that since the acquisition of International, International has continued to operate as a separate company or corporation, is that correct, sir?

A. Yes, sir.

Q. Did there come a time since 1955 when runs were transferred from International to Lufkin, Texas?

A. From Peoria to Lufkin, Texas.

Q. Were any runs transferred from the Wilkes Barre plant of International to Lufkin, Texas?

A. The only runs I recall, I can't be too positive about this, is runs which King Features lost to Buffalo and then transferred them to Lufkin, Texas.

Q. And in those cases, who made the decision as far as you were concerned to transfer the runs to Lufkin?

A. In most cases, I had nothing to do with it. We lost the runs.

Q. Who told you to transfer?

A. We were simply ordered to discontinue the plant. Greater Buffalo simply put their own orders in because they took the work.

Q. Were any runs which King Features had the contract to, which were transferred from the International plant at 375 Wilkes Barre to Lufkin?

A. I think possibly one of them, Eastern Post.

Q. And who made the decision in that case to transfer the run there?

A. Either Mr. Nicht made it, or he made it after talking to me.

Q. Now, in conducting your labor negotiations since 1955, Mr. Gorman, have you ever had to submit a proposed labor contract to Greater Buffalo for approval?

A. I never submitted a proposed labor contract. I have talked to Greater Buffalo on very, very rare occasions about the proposed contract, but I never submitted the contract.

Q. Were you always able to sign a contract without consulting with Greater Buffalo?

A. Yes, sir.

Q. Do you recall ever telling union representatives at International in Wilkes Barre that you must first seek the approval of Greater Buffalo before signing a contract?

A. I don't recall telling them that, no, sir.

Mr. FELDMAN: I have no further questions.

The COURT: Gentlemen, the other parties, do you wish to examine at this time, to cross examine?

376 Mr. CLIMENKO: No, thank you.

Mr. HAYNES: No, thank you.

The Court: All right, redirect examination.

REDIRECT EXAMINATION

By Mr. Moore:

Q. Well, now, this word "sub-contract", whether it was suggested or not, correctly describes the relationship that you had with King, doesn't it?

A. That is my belief.

Q. Getting back to the question of the deficit—I think I will mark this for identification.

The CLERK: D-1 marked for identification.

(Whereupon a document was marked D-1 for identification.)

By Mr. Moore:

Q. I show you a copy of a letter dated October 16, 1957, which is marked Exhibit D-1 for identification, which purports to be from Mr. Joseph J. Gorman to Mr. Walter Koessler, and first of all, I ask you if you recall that this is a letter that you wrote?

A. I believe it is.

377 Q. Now, directing your attention to the fourth paragraph, approximately the sixth line, I note in this letter that you state that at the end of August, 1955, current liabilities exceeded current assets by one hundred and thirty thousand dollars. Do you recall writing that letter?

A. Yes, sir.

Q. And this is a letter written some two or three months before the letter that Mr. Feldman called to your attention, is it not?

378 A. I don't remember the date of the letter that Mr. Feldman referred to.

Q. When you first came into possession at Wilkes-Barre of Press 2022 I think you testified you carried it on your books as "Other assets", is that right?

A. That's right.

Q. And you did not carry it in your account for machinery and equipment?

A. No, sir.

Q. Weren't all the presses that you had at Wilkes-Barre which you were using at Wilkes-Barre carried under your machinery and equipment account?

A. Yes, sir.

Q. And the account for other assets also contained the Sheridan machines that you bought for Greater Buffalo, didn't they?

A. I believe it did.

Q. Now, when you sent an invoice to Greater Buffalo for the work done, the material and the cost of press 2022 in July of 1960, you changed the listing of the account in your books, didn't you?

A. Yes, sir.

Q. And after that it appeared as an accounts receivable?

A. That's right.

Q. And since it hadn't been invoiced, it couldn't be listed as an account receivable prior to that?

379 A. No, sir.

Q. Now, in this matter of interest, did Greater Buffalo Press charge you interest on the payments they deferred for you when you were doing pre-registry?

A. No, sir.

Q. These extra machinists you spoke of, the six machinists, were they hired for the pre-registry work?

A. We hired six additional men primarily for the pre-registry and rebuilding work of our own presses.

Q. And you have kept them on since?

A. They have been on since.

Q. Now, for the work done on press 2022 outside of material and the cost of the press, Greater Buffalo Press has paid International in excess of \$100,000.00 haven't they?

A. Yes, sir.

Q. Now, finally, in your business experience do you know of any bank that you could have gone to prior to July of 1955 to borrow a million dollars when you didn't have a long-term contract and had a deficit in working capital?

A. No, sir, I don't know of any such bank.

Q. Now, this Coosa River Newsprint matter, didn't
380 Coosa River insist on a contract with Hearst?

A. They insisted on a contract with Hearst.

Q. In other words, you couldn't get a contract with Coosa
yourself?

A. We couldn't get a contract with them, no, sir.

Q. And that contract had never been an asset of International
because it was held by Hearst, wasn't it?

A. That's right, sir.

Q. Do you know whether Greater Buffalo has ever succeeded
to that contract?

A. No, sir.

Q. Do you know whether they have or not?

A. No, I don't.

Q. Do you know whether the contract is still in existence
with Hearst?

A. I haven't heard anything about the contract in several
years. I don't know what its standing is.

Q. Now, this stereo machinery that was moved from Parsons
to Sheldon, that, as it turned out, had to be done anyway be-
cause of the pre-registry, didn't it?

A. That is correct.

Q. So that was something you had to, eventually had to do
anyway at International?

A. That is correct.

381 Q. And of course with the collapse of the floor under
press 2022 a lot of the work that had been expended on
the press was lost?

A. That is correct.

Q. Now, going back to the inquiry Mr. Feldman made about
your letter to Mr. Sternberger of May 13, 1955, which is identi-
fied as Government's Reply Exhibit 6; just two months prior
to that you had written Mr. Nicht of King Features Syndicate
that you could not commit yourself to the erection of a building
until you had a long term contract at a price that would enable
you to amortize within a reasonable number of years?

Mr. FELDMAN: Where is that coming from?

Mr. MOORE: Your reply Exhibit 5, introduced on the part
of the Government case in support of their allegation that the
problem of financing was not a problem, and identified on his
direct examination.

By Mr. MOORE:

Q. At the time you wrote this letter of May 13, 1955, you hadn't been able to negotiate a long term contract, had you?

382 A. That is right.

Q. And you hadn't been able to secure any financing?

A. That is correct.

Q. That condition continued and existed at the time that the stock of International was acquired by Greater Buffalo?

A. That is correct.

Mr. MOORE: I have no further questions.

The COURT: Are you through, Mr. Feldman?

Mr. FELDMAN: In one minute, Your Honor.

RECROSS EXAMINATION

By Mr. FELDMAN:

Q. Mr. Gorman, I show you Government's Exhibit Number 10, which is annexed to the main or first affidavit in support of the Government's motion here, and ask you whether you wrote this letter, a copy of it being before you, which is dated May 14, 1956?

A. Yes, sir.

Q. Referring now to page three; will you read this paragraph here?

A. "Other newspapers either print their own comic sections or have the work done by smaller printing companies. Total of Greater Buffalo and International Color Printing Company

383 produces over sixty-three million four-page sections weekly. No other printing company produces more than six million weekly and it is safe to say that the extra capacity now in reserve in other plants could not print more than a fractional part of the supplements now produced by International. Greater Buffalo differs from International in a number of respects, but principally in the fact that it deals directly with newspapers whereas International works exclusively through King Features Syndicate, which in turn sells to the newspapers."

Q. Was that statement correct when you made it on or about May 14, 1956?

A. I presume so.

Q. Mr. Gorman, the contract with Hearst, which you just spoke about when being interrogated by your attorney, when was that contract entered into?

A. Are you talking about the newspaper print contract?

Q. No, about the contract with Hearst?

A. It was in the fall or late summer of 1955.

Q. Isn't it a fact it was entered into in July 1955?

A. The fall or late summer.

Mr. FELDMAN: I have no further questions, Your Honor.

The COURT: Anything more, Mr. Moore?

Mr. MOORE: No, Your Honor.

384 The COURT: You may step down, Mr. Gorman.
(Witness Excused.)

JOSEPH CLINTON, called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

The CRIER:

Q. What is your name?

A. Joseph Clinton.

DIRECT EXAMINATION

By Mr. MOORE:

Q. Mr. Clinton, where do you reside?

A. Sylacauga, Alabama.

Q. And how long have you lived in Sylacauga?

A. I have been there since May, 1960. I was there previous I was there previous to May. I went there in March and stayed for about three weeks.

Q. Would you speak a little louder.

A. I went there in March of 1960 and stayed there for about three weeks and I came home for a couple of weeks and went back in April and stayed about three weeks, and I went in May and I have been there since.

Q. And what is your position?

A. I manage the Dixie Color Printing Company.

Q. You are the general manager there?

A. Plant manager.

386 Q. And can you tell us now what the condition of the Dixie Color Plant at Sylacauga is as to its state of readiness?

A. The equipment is all in place and all ready to run and the building is all finished and it is air conditioned and it is

fully equipped with a railroad siding and docks are in, and we have mostly all the supplies we need and the press is ready to run, and the stereotype department is ready to run. We can go into production in a matter of a few days.

Q. Now, will you describe the plant in itself? First of all, where is it located? Is it within the city limits?

A. It is within the city limits of the City of Sylacauga, which is a rather small town, about three or four blocks from the center of town.

Q. Would you speak just a little slower.

A. We are about two blocks from U.S. highways that go north, south, east and west. We have an L&M railroad siding coming into the plant off a spur line. We are available to the Central and Georgia Railroad. I would say we are within about two hundred and fifty miles of three newsprint mills in Tennessee and Alabama. We are probably within a five hundred mile radius of somewhere between seventeen and twenty million four-page section Sunday newspapers.
387

Q. Now, did you say how large the plant was?

A. The plant is forty-five thousand square feet, and has loading and unloading docks and about three and a half acres of land.

Q. You said you were on a railroad siding?

A. We are on a railroad siding.

Q. Now, do you have any contracts or commitments, for newsprint at the present time?

A. None that I know of.

Q. And do you know whether or not newsprint is readily available at the present time?

A. I believe the market is such that you can buy newsprint without any trouble.

Q. What are the plants that you refer to?

A. Coosa River Newsprint Company has a newsprint plant about twelve miles from our shop. International Paper Company has a plant in Mobile, which is about two hundred and thirty miles and the Bowaters Paper Company has a plant at Cleveland, Tennessee, which is about two hundred and twenty miles.

Q. You were formerly employed by the International
388 Color Printing Company?

A. Yes, sir.

Q. And when did you go to work there?

- A. In 1936.
- 389 Q. How old were you at that time?
- A. Twenty.
- Q. And what was your job?
- A. Stenographer.
- Q. Then carrying on through the years, what other jobs did you do at International?
- A. Oh, I have been in charge of the billing, shipping, had something to do with shipping and billing, production. I finally wound up being assistant production manager.
- Q. Now, do you recall the time that Greater Buffalo Press acquired the stock of International?
- A. Yes, sir.
- Q. And did you know about the acquisition of stock prior to the time it occurred?
- A. No, sir.
- Q. Now, subsequent to the acquisition of stock, was there any change in the management at International?
- A. No, sir.
- Q. Was there any change in the operations at International?
- A. In the physical operations?
- Q. Yes.
- A. Yes, sir.
- Q. Will you describe briefly what changes were effected in the physical operation?
- 390 A. Well, I know we were ordered by Mr. Gorman to put into effect the pre-registry systems that they were using in Buffalo, the scheduling systems. I was sent to Buffalo by Mr. Gorman.
- Q. If you will slow down just a little bit.
- A. I was sent to Buffalo by Mr. Gorman to check over their methods of registering and scheduling, which I did, and eventually we put them into practice.
- Q. Now, this change to pre-registry involved physical changes in the plant, did it not, or machinery?
- A. Yes, sir.
- Q. Where did the plans and drawings come from?
- A. From Buffalo.
- Q. What was the effect the eventual effect on operations of this change in pre-registry?
- A. We had a substantial increase in production. Our production prior to the acquisition ran around fifteen thousand four

page sections per press, what we called a single width press hour. It eventually went up to about twenty thousand.

Q. Did that change in efficiency result in an increase in earnings for the company?

391 A. Yes, sir.

Q. Now, do you recall going to Sylacauga early in 1955?

A. Yes, sir.

Q. What was the occasion of your trip?

A. Mr. Gorman sent us south, Tom Brennan and Roger Zardus and I, to look over sites for a possible printing plant that we might put in the south somewhere.

Q. Now, at that time did you visit sites other than Sylacauga?

A. Yes, sir.

Q. Where else did you go?

A. We stopped in Atlanta, and looked over different kinds of buildings put up by different contractors, we went to Birmingham and looked, we went to Talladaga and to Sylacauga.

Q. Prior to the time the stock of International was acquired by Greater Buffalo, do you know of any definite commitment that was ever made on behalf of International to build a plant in Sylacauga?

A. No, sir, no definite commitment that I know of was made.

Q. Now, were there tentative plans?

A. Yes, sir.

392 Q. And can you describe briefly what those plans were?

A. Yes sir. We had plans drawn up by the contractor in the south for a twenty-five thousand square foot building into which we had planned to put three of the presses that were located in the Parsons plant.

Q. Now, in connection with that change in your facilities in Parsons, what else were you going to do at Wilkes-Barre?

A. We were going to send the other two Parsons' presses—there were five presses in the Parsons plant all told—we were going to send the other two presses into the Sheldon plant with the stereotype department, and shut down the Parsons plant. We also thought about shutting down the Peoria plant at the same time, because of the—part of the Peoria workers also were going to move south. The balance of the Peoria work we planned on bringing to Wilkes-Barre.

Q. Now, what did that plan involve as to the moving of production from Wilkes-Barre to a southern plant?

A. As I remember it, there were about eight million, we figured there were about eight million four page standards we had that could be printed in the southern plant. That was the total.

393 Q. And that would have involved a production of eight million at Wilkes-Barre?

A. Yes, sir.

Q. Do you know what prevented the tentative plans that International had for a southern plant from materializing?

A. From materializing?

Q. Yes.

A. Mr. Gorman couldn't get the contract with King Features that would allow us to pay for the plant.

Q. Do you know how much money approximately would have been involved in the construction of a plant in the south at that time when you were planning in early 1955?

A. I believe for the twenty-five thousand foot, square foot plant that we had the plans drawn on, it seems to me we had a contract bid for something around \$200,000.00 for that particular building.

Q. Did you have figures on machinery?

A. I don't remember. Mr. Gorman made estimates but I don't remember what they were.

Mr. CARLSON: We are still having difficulty hearing the witness.

395 Mr. MOORE: If you will speak up; lean up further toward that microphone.

By Mr. Moore:

Q. Subsequent to the acquisition of the International stock by Greater Buffalo, did there come a time when a determination was made to build a plant in Sylacauga?

A. Yes, sir.

Q. And when was that?

A. In the early fall of 1955.

Q. And did you have anything to do with the plans that were drawn for this projected plant in Sylacauga?

A. Yes, sir.

Q. Well, what were the plans, what were the original plans?

A. Mr. Gorman told me we were going to go ahead with the southern plant. That was after the acquisition—

Q. Could you come forward and speak a little slower?

A. He told me we were to go ahead with the southern plant; we had to follow the Lufkin plans. Lufkin is the Southwest color plant in Texas. He told me to obtain a set of the Lufkin plans, which I did. So the Lufkin plans amounted to 396 forty-five thousand square feet which was too large for the original plot of ground we had been figuring on. So I went back to the people in Sylacauga with whom we had been dealing, to see if there was any more land available. Eventually I set the Lufkin floor plan onto what would be an available plot, what might be available, to see how it fitted and went from there.

Q. So the plans for the Sylacauga plant, as it now exists, were in fact patterned after the Greater Buffalo Lufkin plant?

A. Yes, sir.

Q. Now, who did the engineering on the Sylacauga plant?

A. On the building itself?

Q. Yes.

A. Originally we had engineering work done by D & B Fabricating Company, who were a contractor down there, but the final engineering for the building was done by Armco. It was the people from whom we bought the building.

Q. Now, how was the land acquired for this plant?

A. The land was donated by the people of Sylacauga.

Q. And to whom was title conveyed?

A. Greater Buffalo.

397 Q. Do you recall when that was?

A. That was in July of 1956.

Q. And title was never conveyed to International?

A. No, sir.

Q. Now, when was Dixie Color formed?

A. It was incorporated in April, 1957.

Q. And that is an Alabama corporation?

A. Yes, sir.

Q. Are you an officer of Dixie Color Corporation?

A. Yes, sir.

Q. Are you a director?

A. Yes, sir.

Q. Who owns all of the outstanding stock of Dixie Color?

A. Greater Buffalo Press.

Q. Has anybody other than the initial subscribers ever owned any of the outstanding stock of Dixie?

- A. Not to my knowledge.
- 398 Q. Now, do you know whether or not the real property upon which this plant stands was conveyed to Dixie?
- A. It was conveyed to Dixie by Greater Buffalo Press. I know that, yes.
- Q. Do you know when?
- A. Shortly after Dixie Color was incorporated.
- Q. Was it sometime in 1957?
- A. Yes, sir.
- Q. So the title to this real property, the plant and everything at Sylacauga is in Dixie Color?
- A. Yes.
- Q. Now, had Dixie Color, how has Dixie Color been financed to date?
- A. By Greater Buffalo Press.
- Q. How is that financing done, advances made or loans?
- A. Advances.
- Q. And do you know approximately how much has been advanced to Dixie by Greater Buffalo?
- A. I understand the total is about something over \$900,000.
- Q. Now, are you familiar with press 2022?
- A. Yes, sir.
- Q. Do you know the purpose of the acquisition of press 2022?
- A. Yes, sir.
- 399 Q. And what was it acquired for?
- A. It was acquired to be erected at Sylacauga.
- Q. And are you familiar with the rebuilding of that press?
- A. Yes, sir.
- Q. And where was the work on rebuilding the press done?
- A. Part of the work was done in Philadelphia and part of it was done in the Wilkes-Barre Plant of International Color and the bulk of it was done at the Dixie Color Printing.
- Q. Now, do you know where the plans came from for the rebuilding of this press?
- A. The major plans came from Greater Buffalo.
- Q. And do you know when those plans for that press were completed?
- A. No. When you say plans like that, there was no one set of plans to cover the entire project.

Q. Well, let me put it this way then: Do you know whether or not the plant at Sylacauga was designed specifically to house press 2022?

A. Yes, sir.

Q. Now, I will elaborate on that. Can you describe the type of pit that was built into the Sylacauga Plant?

A. Yes. Each printing press requires its own peculiar plant or pit so far as dimensions are concerned for the undercarriage of the press, for the drive, and what not and one press won't normally fit into an odd pit and the pit for press 2022 was included in the original design of the building and the pit was installed with the original foundation of the building, the pit for press 2022 and the pit for press 1812.

Q. Now, do you know when the plans for that pit, the drawings were completed?

A. The drawings were completed and sent out for bid in July of 1956, so the drawings for the pit were finished before that time.

Q. And those drawings included the design of a pit built right around this press 2022?

A. That's right.

Q. Now, you mentioned that there was another press 1812?

A. Yes, sir.

Q. Let me ask you this: Do you have any other press down at Sylacauga now?

A. No, sir.

Q. Well, what is press 1812 to which you refer?

A. Press 1812 was located in the press room of the Buffalo Plant on Grote Street and the beginning when we were 401 advised that we could go ahead with the Sylacauga plant, the first thing we were going to put down, we were told we would put down there was Buffalo Press 1812, so we got ready to prepare a pit for it and the first pits we actually put in, both pits for 1812 and 2022 were put in with the foundation of the building but we had the contractor finish the pit for 1812 first because our understanding was that that was going to be the first press available.

Q. But as it developed, the first press available was 2022?

A. That's right.

402 Q. Now, what is the capacity of this Sylacauga plant?

A. As it stands now, sir?

Q. Yes.

A. I think we could print nine to ten million four page standards per week.

Q. And what would that entail operationswise on a shift basis?

A. Three shifts a day and six shifts a week.

Q. In this printing business are continuous or semicontinuous operations of this type common?

A. Yes, sir, on account of the heavy investment.

Q. And in general, is it the experience in the printing business that partial, just one shift operations, are not profitable?

A. That's right, sir.

Q. Now, from your knowledge of the business, and from your knowledge of this plant, of which you are the general manager, in your opinion is it possible to operate the Sylacauga plant as it now stands on a production of four million fours per week and show a profit?

A. No, sir.

Q. Now, what in your opinion is the minimum production of fours which will enable the facility to operate at a profit?

A. I don't think we could get by for much less than 403 seven and a half maybe.

Q. I suppose as your production decreases, your costs increase, don't they, proportionately? I mean, your losses increase proportionately?

A. That's right, sir, because a lot of overhead would stay the same.

Q. So, it is really a disproportionate decrease. I used the wrong word.

A. Yes, sir.

Q. Now, an operation of three million four hundred thousand fours per week would be approximately a little more than one third of capacity, is that right?

A. Just about one third, that's right, sir.

Q. And what would that mean as to hours of operation basically?

A. Forty-eight.

Q. Forty-eight hours per week?

A. Yes, sir.

Q. As against a full operation of how many hours per week?

A. One hundred forty-four.

Q. Now, you were familiar with the operation of the Peoria plant of International?

404 A. Yes, sir.

Q. And what was their printing, average printing per week?

A. They ran from five million to six million four page standards per week.

Q. In your experience did Peoria ever operate at a profit?

A. They never operated at a profit, I am sure.

The COURT: We will take a short recess.

(Whereupon a short recess was taken.)

405 (Proceedings resumed pursuant to recess.)

Mr. MOORE: I will identify this and then give it to the Clerk when he comes in, your Honor.

By Mr. MOORE:

Q. I show you a photograph and ask you if that is a picture, if that is a fair representation of the interior of the Sylacauga plant of Dixie Color, showing press 2022 installed?

A. Yes, sir.

Q. Mr. Clinton, did you make a physical inventory of the machinery, equipment, furniture, installations in the Sylacauga plant of Dixie Color as of January 1, 1961?

A. Yes, sir.

Q. And I show you a document and ask you if you can identify this as the inventory you made?

A. Yes, sir. This is as of October 16, 1961.

Q. Now, directing your attention to the fourth page of this inventory, will you explain how you have it set up on there?

A. Each item in the plant we have given an inventory 406 number, which we show in the first column. The next column we show the amount, that would be the number or the numbers of any items. Next, is the description of the item, and next the source from which it came to us.

Q. I notice—pardon me—off the record.

(Whereupon a discussion ensued off the record.)

The COURT: Do you want to offer that picture and the inventory?

Mr. MOORE: Yes.

The COURT: Any objection to that?

Mr. FELDMAN: None at all.

The COURT: That will be marked when Mr. Ciccarelli comes in. Mr. Ciccarelli, there are two exhibits here, would you mark them in evidence. One is a picture, and the second is an inventory.

(Thereupon photograph referred to was marked exhibit D-2 and received in evidence.)

407 Mr. MOORE: Will you mark this for identification? (Thereupon inventory referred to was marked Exhibit D-3 for identification.)

Mr. MOORE: Does your Honor wish to follow this?

The COURT: Yes.

By Mr. MOORE:

Q. Now, I show you Exhibit D-3 for identification, which is the inventory you described as of October 16, 1961, and referring to the third page, it lists office furniture and fixtures. I notice the source of those is F-e-l-a. What is Fela, who is Fela?

A. Fela was the name of the man who ran the Keystone Printing Company in Wilkes Barre, Pennsylvania and some years back, three or four years, they went into bankruptcy, and we bought—International bought and Greater Buffalo Press bought a lot of the items in that plant, including their office furniture and fixtures. These items here came to Sylacauga from the Fela or Keystone plant.

408 Q. They were shipped directly from the Keystone plant to Sylacauga?

A. Yes, sir.

Q. Then I notice on Page 2, the fourth item, one Photo Rapid Copier, that is marked "source—International Color Printing Company"?

A. Yes, sir.

Q. What was that machine?

A. A photocopy is a machine used for making photocopies of letters, and so forth, and the first time I went to Alabama I took that with me in my car so I could make copies, and I still have it down there. It has since been billed for by International to Dixie Color Printing Company.

Q. That has been invoiced to Dixie?

A. Yes, sir.

Q. Now, I note further down on the page you have items marked 'Buffalo', what is that?

A. That is equipment that was shipped to us by Greater Buffalo, sometimes from Dunkirk, sometimes from Burk Machine Tool Company, sometimes directly from Greater Buffalo plant. We mostly always referred to it as either Buffalo or Dunkirk.

409 Q. And the sources that you have on here that are marked Buffalo or Dunkirk, that refers to material that was shipped to Sylacauga from Buffalo or Dunkirk by Greater Buffalo, is that right?

A. Yes, sir, stereo or any other kind of equipment.

Q. And the only items that were received from Wilkes-Barre that are in the plant, were in the plant as of October 16, 1961, all bear the legend "Wilkes-Barre", is that right?

A. Yes, sir, either Wilkes-Barre or International Color Printing Company.

Q. Now, referring to the first inside page of this exhibit and the second inside page of this exhibit, do those two pages contain a list of the items that were shipped from Wilkes-Barre to Sylacauga?

A. Yes, sir.

Q. Well, the next items that appear to have been derived from Wilkes-Barre are items 34 and 35. Will you direct your attention to those?

A. Yes, sir.

Q. Items of the Nickel Plating Department. Now, what are those items?

A. They are cylinders that are used to carry the stereotype plates from one nickel plating tank to another.

410 Q. Do you know whether or not these items were machined in Wilkes-Barre?

A. They were machined in Wilkes-Barre, the equipment. The body of the cylinder is made of micarta and the micarta was shipped to International Color from Buffalo together with the engineering and what not to convert them into the plate racks and the work was done in International at Wilkes-Barre. Then they were shipped to us in Sylacauga.

Q. Was Dixie billed for these items or this material?

A. After they got the micarta in Wilkes-Barre, they had to buy stainless steel and rods and some various other items that went into the project and Dixie Color was billed for the additional material.

Q. Well now, I note the next item "rectifier". What is that, item 36?

A. That is a rectifier used in the nickel plating operation. It was sent down there from Wilkes-Barre and it has been billed to Dixie Color by International Color.

Q. Item 43, Niagara Shears, where did they originally come from?

A. That originally was shipped from Buffalo down to Wilkes-Barre, I am sure by mistake, and it sat down in Wilkes-Barre for several years crated until we sent machinery from Wilkes-Barre to Sylacauga and it was sent down with the machinery.

411 Q. That was never uncrated in Wilkes-Barre?

A. No, sir.

Q. Item 51, what was that?

A. It is a sta-hi mat roaster used to roast mats before they are put into the casting box. This was a real old machine. It was not being used in Wilkes-Barre and it was sent down there and it has been invoiced by International to Dixie Color.

412 Q. What is the value of that machinery, would you say?

A. I think we are paying fifty dollars, or one hundred dollars, but I don't believe it has any value; I don't think they can sell it any more. It is valuable to us because we don't have one, or didn't have one.

Q. Item 59, press proof, what is that?

A. A proof press. That is a press on which we try out the stereotype plates before they are put on the large printing press and at one time we had two proof presses in the Wilkes-Barre plant, both of which were badly in need of repair, so we borrowed one proof press from Buffalo to allow us to put down a proof press at a time in Wilkes-Barre with the understanding that when we were finished with it, it would go on to Sylacauga. That is what happened. Eventually they overhauled two proof presses in Wilkes-Barre and sent us a proof press for Sylacauga.

Q. This proof press originally belonged to Greater Buffalo?

A. Either this one or one of the two that are in Wilkes-Barre. Of the three, one of them belonged to Buffalo.

Q. Now, Item 100, what is that?

413 A. That is the press itself.

Q. That is the press 2022 which we had the testimony on?

A. Yes.

Q. All right. Now, Item 109.

A. That covers the old hand baler, and has been invoiced to Dixie Color by International Color. That is also Item 110.

Q. What did you say that was, hand what?

- A. Baler, b-a-l-e-r, for baling waste paper.
- Q. What is the value of those items?
- A. Twenty-five dollars, fifty.
- Q. And item 113.
- A. That is a work table and that has been—
- Q. It is a bench, kind of?
- A. It is a portable work table, one that you push around.
- Q. New or old?
- A. Old.
- Q. What is the value of that?
- A. I would judge that would be worth about twenty-five dollars.
- Q. Item 262, the last item.
- A. That is a stereotype print cutter, used for cutting the sizes of stereotype plates. It was originally sent from Buffalo 414 to Wilkes-Barre and used there for several years and I understand always with the idea that it would be sent to Sylacauga when we need it in Sylacauga.
- Q. Now, are those the only items that came to Sylacauga from Wilkes-Barre, the ones you have described?
- A. They are still there.
- Q. Now, there was the one item on machine shop tools. Do you know about that?
- A. Yes, sir, a machine shop equipment.
- Q. And what was the case of sending that to Sylacauga?
- A. That was sent down to enable them to do the work necessary to erect the press, the machine work that was necessary to go along in rebuilding the erection.
- Q. Those were machine shop tools that the machinists used?
- A. Yes, sir, blades, milling machines, drill presses.
- Q. Where is that equipment now?
- A. We shipped it back to Wilkes-Barre.
- Q. And when did you ship it back?
- A. After the last machinist left.
- Q. When there was no longer need for this one?
- A. When they were finished with it.
- Q. Now, in the first two pages, I note, of this inventory, you reflected, or you have a description of the items to which you have testified which came to Wilkes-Barre? 415
- A. Yes.
- Mr. MOORE: I will offer the inventory in evidence.
- The COURT: Any objection?

Mr. FELDMAN: No objection.

The COURT: Received.

The CLERK: Exhibit D-3 marked in evidence.

(Thereupon Exhibit D-3 previously marked for identification, was then received and marked in evidence.)

By Mr. MOORE:

Q. Now, do you know of any machinery, equipment or parts that are in the Sylacauga plant of Dixie Color that came from Wilkes-Barre, which you have not been paid for, or invoiced?

A. No, I don't know of any that is there except what I have got on the inventories.

Q. And, has all of the machinery parts been paid for with the exception of, actually paid for, with the exception of the
416 smaller items you have mentioned?

A. They have been invoiced, so I would assume they have been paid for.

Q. Now, are you familiar in general with the printing done at Wilkes-Barre for the account of King for shipment to southeastern papers located in the southeast area?

A. Yes, sir.

Q. And are you familiar, in general, with the transportation rates that have been, or are currently paid for the shipment of those comic supplements?

A. Yes, sir.

Q. And are you familiar, have you informed yourself as to the rates to these various newspapers, located in the southeast on shipments from Sylacauga?

A. Yes, sir.

417 Q. And as a result of that comparison do you know whether or not the printing of these papers, which are printed for the account of King, at Wilkes-Barre, if they were printed at Sylacauga would there be a substantial savings in transportation?

A. Yes, for papers located in that area, yes, sir.

Mr. MOORE: You may ask.

CROSS EXAMINATION

By Mr. FELDMAN:

Q. Mr. Clinton, referring to the Defendants' Exhibit D-3, namely the physical inventory as of October 16, 1961, did you at any time prior to October 16, 1961, prepare any physical

inventory of equipment and machinery at Dixie Color Printing Corporation?

A. Yes, sir.

Q. When did you do that, sir?

A. We prepared an inventory, physical inventory, December 31, 1960, and then we kept a running inventory.

Q. Was there any other inventory besides that one made?

A. No, sir.

Q. Now, were you informed or did you prepare this inventory with the thought that it was going to be used in connection with this litigation?

A. No, sir.

418 Q. That was made in the regular course of your business?

A. I made it because I thought I better know what was there.

Q. You had no thought when you made the inventory that it was going to be offered as an exhibit by the defendants?

A. No, sir.

Q. Now, the previous inventory which you made, is that set up in the same manner as this?

A. Yes, sir, I believe it is exactly the same.

Q. Now, when was the last time machinery or equipment was shipped from Dixie to International at Wilkes-Barre?

A. The second Saturday in October. I am not sure of the date.

Q. Was any equipment shipped prior to January 1960 from Dixie to Wilkes-Barre?

A. I can't think of any.

Q. I mean 1961?

A. Prior to January of 1961?

Q. 1961.

A. If there was, it was something of a minor nature, major equipment was not.

Q. Major equipment was or was not?

A. Was not.

418 Q. All the major equipment was shipped back, if any, after January 1961?

A. That is correct.

Q. Can you recall any equipment at all which was shipped from Dixie to International prior to January 1961?

A. I don't recall any.

Q. You don't recall any, sir?

A. I don't recall any.

Q. Now, at Dixie, what presently is the most expensive equipment you have there? Isn't it press 2022?

A. Press 2022 has more money in it than anything else, I would say.

Q. Have you had that equipment appraised recently?

A. I never had it appraised.

Q. Do you know whether it ever has been appraised?

A. I don't know whether or not it has.

Q. How much money was expended in constructing press 2022 including the purchase price, do you know?

A. I don't know that.

Q. I believe you testified that for all expenditures which International made in regard to the construction of Dixie that International has been repaid or is in the process of being repaid, is that correct, sir?

A. No, I don't think I testified to that.

420 Q. What did you testify to, can you recall, in regard to moneys which International—

A. There was no question like that.

Q. (continuing) In regard to moneys which International advanced or moneys they expended in either constructing the plant or furnishing Dixie with equipment; to your knowledge has International been repaid?

A. I wouldn't know.

Q. Do you know whether any arrangement was made to repay International?

A. I wouldn't know that.

Q. Well, as the plant superintendent of Dixie, do you know anything at all about payments made in regard to equipment shipped from International to Dixie?

A. Some of it I do, yes.

Q. What equipment do you know about in regard to payment?

A. Well, I know some of the equipment we have been billed for. I have approved some bills. I don't get all bills.

421 Q. Now, when you receive bills, who sends you the bills from International?

A. I don't have any bills from International.

Q. Well, where do you get the bills from then?

A. From the people from whom we make purchases or have work done.

Q. I am talking now about equipment or anything which came from International.

A. I was not billed down there for anything that came from International.

Q. But you did receive material from International, didn't you?

A. Yes, sir.

Q. And who determined the price to be paid International?

A. I don't even know what they were paid.

Q. You don't know whether they were paid or not?

A. No, sir.

Q. I believe you testified earlier that Dixie at the present time does not have any contracts with the Coosa River plant, is that correct, sir?

A. That is correct. I said to my knowledge it did not.

Q. Now, since International was acquired in 1955, have you had any conferences with the people at Coosa River in 422 regard to furnishing Dixie with newsprint when Dixie commences operations?

A. Yes, sir.

Q. And whom did you have such conversations with?

A. The president of Coosa River Newsprint Company and various salespeople.

Q. Did you ever discuss the matter with Mr. Watt?

A. Yes, sir.

Q. And is Mr. Watt still active in the business?

A. No, sir.

Q. Who succeeded him?

A. Maury Hunt.

Q. Had you had discussions with that gentleman?

A. Yes, sir.

Q. When did these discussions take place?

A. I have had discussions with him continuously up until the last month. He calls me up regular.

Q. When you say "continuously", did you have discussions with him immediately after June, 1955?

A. I don't remember whether it was he or Watt. I think Mr. Watt was still there in June, 1955.

Q. Well, after June, 1955, can you place a time when you first had discussions with either Mr. Watts or his successor?

A. No, I wouldn't know exactly when.

423 Q. Can you tell me was it still 1955 or was it first in 1956?

A. We probably had discussions in 1956. I am not sure whether or not we had any after June, 1955 for the remainder of the year or not.

Q. When you say "we" do you mean just yourself or were there other people involved?

A. I probably sat in on discussions.

Q. And who participated in the discussions?

A. I sat in on discussions that included Mr. Gorman, Mr. Brennan and Mr. Hammond.

Q. Where did these discussions take place?

A. I have had discussions with them in Wilkes-Barre, discussions with them in Alabama and discussions with them in New York.

Q. Was Mr. Gorman present at the discussions which were held in Alabama?

A. I don't believe—well, I am not sure. I never went to Alabama—I went to Alabama with Mr. Gorman but I don't remember whether or not we saw either Mr. Hunt or Mr. Watt at the time. But I think we did. I think we had dinner with Mr. Watt one night.

Q. We are talking now about the period after June 1955, is that correct?

424 A. Yes, sir. Mr. Hammond was also there.

Q. Now, have you had discussions with Mr. Gorman in regard to the possibility of Dixie getting its newsprint requirements from the Coosa River mill since June, 1955?

A. Yes, sir.

Q. At the present time has any arrangement been reached in regard to Coosa River supplying Dixie in the event operations should start at Dixie?

A. No, sir.

Q. Have you or anyone else on behalf of Dixie made any proposals to the people at Coosa River in regard to getting newsprint in the event operations commence at Dixie?

A. I think any proposals would come from them.

Q. Well, have you come forth with any counter proposals.

Mr. MOORE: If Your Honor please, if I can make an objection, I think I have been very patient here. The only reason Coosa was mentioned was the Government in one of its affidavits

dsavits, I believe, said that the great stumbling block of a plant
 in the south was to be able to make this wonderful
 425 contract with Coosa River and all we brought out was
 that Greater Buffalo has no contract. Now, it seems to
 me very clear from the cross examination that Coosa is around
 trying to sell them all the time and I don't see that we are
 getting any place spending twenty minutes on it. It seems to
 me irrelevant.

Mr. FELDMAN: The point is, Your Honor, that the witness
 has testified that transportation is a big factor in regard to
 newsprint and the documents submitted by the Government
 show that Mr. Gorman originally, participating in the negotiations
 which preceded the first contract, stated that one of the
 big things about going into the Sylacauga area will be the fact
 that they will be operating a plant which is so near a newsprint
 mill and the evidence in our possession is further that
 426 discussions were had with these people. I am interested
 in finding out the status of that.

The COURT: Overruled. You may ask. Read the last
 427 question. What confounds me somewhat on this picture
 of newsprint, I have the impression from Mr. Gorman
 that the only people who could get a contract, at least, a de-
 sirable one, was the Hearst, and that they insisted on it, but
 apparently there is nothing between Hearst and the Buffalo
 Press in the way of a contract to supply newsprint.

Mr. FELDMAN: Well, there are some documents in our moving
 papers, your Honor, which show that arrangements were
 made pursuant to that contract for International in the event
 they did start a plant down there that they would get newsprint
 supplied. In other words, Hearst was going to assign their news-
 print but it would come from Coosa River to International.

The COURT: The witnesses have said they know of no such
 arrangement. Let me ask you, you are down there on the
 428 scene; if I gave you an order tomorrow to start printing
 up these color comics, where would your newsprint come
 from? What is your arrangement?

The WITNESS: I could get newsprint from Coosa River, or
 from International or Canada where they are all at the same
 price.

The COURT: At an attractive price?

The WITNESS: Yes.

The COURT: More attractive than at Wilkes-Barre?

The WITNESS: No, sir. I think the price is the same whether it is Canada or Coosa River.

The COURT: Even though Coosa River is only twelve miles from the plant?

The WITNESS: Yes, sir. There is some sort of a zone basis. The Canadian price is the same price.

The COURT: Your attractiveness down there is the short rate of delivery of the finished product to the consumer?

The WITNESS: Yes.

The COURT: There is no advantage of that plant being 429 twelve miles as far as the cost of newsprint is concerned?

The WITNESS: No, sir.

Mr. MOORE: I think, your Honor, to answer the question about the first matter, they were looking for a responsible party to run a contract and these people will sell anybody now.

By Mr. FELDMAN:

Q. On the basis of discussions you had with people at Coosa River, and with other people, is it your testimony that there was no problem presently in getting newsprint in the Sylacauga area?

A. There is no problem in getting newsprint.

Q. And is it your testimony that no freight cost advantages would come to Dixie if newsprint were purchased from the Coosa River Newsprint Company?

A. The Coosa River Newsprint Company would allow us to publish, I presume, would allow us to publish transportation costs from Coosa River to Sylacauga and if we could manage one way or the other, to haul it any cheaper, than we could save the difference.

430 Q. Has a similar arrangement been offered from the sites of other newsprint companies?

A. I don't know.

Q. Have you made inquiry at all?

A. No, sir.

Q. I believe you testified that no definite commitment was made prior to June, 1955 for International to build a plant in the southeast, is that correct?

A. In Sylacauga?

Q. That's right.

A. That's right.

Q. At Sylacauga, is that right?

A. Yes.

Q. And at that time, to your knowledge, who had authority to make any such commitment on behalf of International?

A. Mr. Gorman.

Q. So any knowledge you know in that connection came to you from Mr. Gorman, is that correct?

A. That's right.

Q. I believe you also testified that the reason the commencement of no plant began was because International was unable to obtain a favorable contract from King, is that correct, sir?

A. Yes, sir.

431 Q. You know when that contract was entered into between King and International?

A. Yes, sir.

Q. When was that?

A. July, 1955.

Q. And when was International acquired from Greater Buffalo?

A. In June, 1955.

Q. Now, when did you first go down to Sylacauga with the directions to contact people for the purpose of erecting a plant there?

A. When you say contact people—

Q. That's right.

A. Do you mean a contractor?

Q. Anyone, whether it be a contractor, whether it be the people of the community.

A. I don't think I was ever sent down with exactly that direction.

Q. What directions were you sent down with after the acquisition of International?

A. After the acquisition of International?

Q. Yes.

A. I was just told to go ahead with the plant.

Q. And were you given discretion as to how you were going to do it?

432 A. As to how I was going to go ahead, but I wasn't given directions to do what I wanted to do.

Q. When did you go down there under those instructions the first time?

A. Well, my contacts were made by telephone after I was given the okay to go ahead.

Q. And from where did you make those contacts by telephone?

A. From Wilkes Barre.

Q. And did there thereafter come a time when you went down to Sylacauga?

A. Yes, sir.

Q. And when was that, sir?

A. I made many trips to Sylacauga.

Q. Well, when was the first trip you took after you made these telephone calls from Wilkes Barre?

A. I think I went down there in December of—well, maybe it was in July of 1956.

Q. And when you went down there, did you contact people in the construction field, electrical field?

A. Yes, sir.

Q. And did you indicate to them what the name of the proposed plant was going to be called?

A. I might have and I might not. I don't remember if
433 I told them it was going to be Dixie Color Printing Company.

Q. Did you know at that time it was going to be Dixie Color Printing Company?

A. No, I did not, sir.

Q. What name did you use in introducing yourself, or talking to these people?

A. I had already talked to all of the people. I told them I felt as a representative of International Color, so I didn't tell them who I was.

Q. Did you mention Greater Buffalo Press at all?

A. Yes, sir.

Q. And now, subsequently, did you ask for bids as to any jobs at all from these people?

A. Yes, sir.

Q. And do you recall on the bids which came in, how the proposed plant was referred to, I mean, what name was used in referring to the proposed plant?

A. Southern plant, is that what you mean?

Q. Southern, or any other name? Was the name International Color Printing referred to?

A. Well, the tracings that were supplied to us by Armco carried their own title block. I don't know whether they

434 in a letter or any letters they would have sent would have been addressed to International Color.

Q. You don't know. You can't recall the subject matter referred to in the letter, I mean?

A. Well, there were many letters. Some of them —

Q. How did they refer to this plant in the south? When you say "southern", was this the way that it was referred to?

A. Well, they talked about the southern plants and southeastern plants.

Q. Were these letters directed to you at Wilkes Barre or directed to you elsewhere?

A. Directed to me at Wilkes Barre.

435 Q. I believe you testified that a deed of land was made to Greater Buffalo Press, is that correct?

A. Yes, sir.

Q. Do you recall the circumstances under which the deed was given to Greater Buffalo Press?

A. I don't quite follow you.

Q. Immediately prior to the deed being given to Greater Buffalo, did you have any discussions with people at Sylacauga in regard to that deed being made to Greater Buffalo?

A. Yes.

Q. Who did you have discussions with down there?

A. The Mayor of the Town, Ed Howard and Jack Nealeans, Manager of the Chamber of Commerce and the Secretary of the Industrial Board.

Q. Did the Mayor come up to Wilkes-Barre at all?

A. Yes, sir.

Q. When was that, prior to the deed being given to Greater Buffalo —

A. Yes, sir.

Q. Or —

A. Prior to.

Q. Did he visit the plant?

A. I'm sure he would have, he would have been interested.

Q. Who did he speak with?

436 A. He spoke with me and Mr. Gorman.

Q. Did he visit the Greater Buffalo Plant at all, to your knowledge?

A. Mr. Nealeans?

Q. That is right.

A. Yes, sir.

Q. That was on the same trip?

A. Yes, sir.

Q. Did he visit the Greater Buffalo Plant before, to your knowledge, or after that first trip to Wilkes-Barre?

A. I believe it was after. I am not positive, I think it was after.

Q. At the time the land was deeded to Greater Buffalo Press do you know whether any people at Sylacauga were soliciting funds in order to themselves be able to deed the land to Greater Buffalo Press?

A. They had to solicit funds, that is right.

Q. In soliciting funds do you know what name was used in regard to the proposed plant, whether it was International or Greater Buffalo?

A. I wasn't there, I wouldn't know.

Q. Isn't it a fact that when it was brought to your attention that the land would be deeded that it was indicated the land would be deeded to International Color Press rather than Greater Buffalo Press?

A. Would you repeat that?

Mr. MOORE: What was the question?

By Mr. FELDMAN:

Q. I will rephrase the question. Mr. Clinton, I show you Government's Reply Exhibit Number 13, and show you a memorandum consisting of the last two pages, dated June 18, 1956, and bearing the name at the end "Joseph Clinton", and addressed to Mr. Gorman. Is that a copy of a memorandum you wrote to Mr. Gorman?

A. Yes, sir.

Q. It is.

The COURT: We have a new stenographer coming in, she is just about to start. We will have her start at ten o'clock in the morning.

(Thereupon proceedings were adjourned to October 26, 1961, at 10:00 a.m.)

APPEARANCES: *Messrs. Raichle, Banning, Moore & Weiss, by James O. Moore, Esq., & Arnold Weiss, Esq., appearing in behalf of Defendant, Greater Buffalo Press.*

Messrs. Gallop, Climenko & Gould, by Jesse Climenko, Esq., and Messrs. Lord, Day & Lord, by Robert B. Haynes, Esq., appearing on behalf of Hearst Corp.

Messrs. Baker, Hostetler & Patterson, by Richard F. Stevens, Esq., appearing on behalf of Newspaper Enterprise Association, Inc.

Raymond M. Carlson, Esq., Elliott H. Feldman, Esq., Department of Justice, Anti-Trust Division appearing in behalf of Plaintiff.

**439 PROCEEDINGS OF OCTOBER 26, 1961, COMMENCING AT
10:00 A.M.**

The COURT: Will the last witness take the stand, please.

JOSEPH CLINTON, having been previously sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION

By Mr. FELDMAN (Continued:)

Q. Mr. Clinton, do you recall testifying yesterday that nine hundred thousand dollars have been advanced by Greater Buffalo Press to Dixie Color?

A. I think I testified to the effect it was my understanding there was a total of nine hundred thousand dollars invested in Dixie Color.

Q. Where did you get the knowledge?

A. From discussions with Greater Buffalo, some of it I had personal knowledge of, I passed on the bills.

Q. Can you give us a breakdown of that nine hundred thousand dollars as to building, land, or anything else, a general breakdown?

A. I couldn't give an accurate breakdown.

Q. Can you give me an approximate breakdown?

440 How much do you attribute to the building?

A. I believe the building would have cost somewhere in the neighborhood of four hundred thirty thousand dollars.

Q. Mr. Clinton, I show you a copy of a memorandum dated January 9, 1959, which purportedly was written by you to Attorney Edwin D. Livingston, in Sylacauga, Alabama, and ask you whether this document refreshes your memory?

A. I remember this letter.

Q. All right. Does that letter refresh your memory as to the cost of the building at Sylacauga?

A. I would say that was probably the cost of the building at that time.

Q. Does it refresh your memory as to the total cost, or is your answer still the same?

A. My answer would be the same. I think the building would cost in the neighborhood of four hundred twenty thousand or four hundred thirty thousand dollars.

Q. In January 1959, what did you estimate the cost of the building was?

A. According to that letter, three hundred eighty-three thousand dollars, or three hundred eighty-seven thousand dollars.

441 Q. Three hundred eighty-three thousand seven hundred fifty dollars, is that right, sir?

A. Yes, sir.

Q. When was the building completed?

A. Well, the building was substantially completed about the end of 1958. We continued to work on the building up until the last—I would say the last month or two.

Q. Is it your recollection that in 1959 that ninety-nine percent of the building was completed?

A. Ninety-nine percent of the building as we had originally formulated the plans probably were completed at that time. We made revisions after that time.

Q. What revisions did you make after that time?

A. We raised the electrical control balcony; we put a sizable unloading dock on the back of the building to go on to the one spur track or siding.

Q. How much costs were involved in those innovations you just described since January, 1959?

A. I would say, as near as I can estimate, the difference between maybe four hundred thirty thousand dollars and the figure you have there.

Q. Outside of the building, what other expenses were incurred?

442 Q. A. The machinery.

Q. By the machinery, do you mean the main press 2022?

A. No, press 2022 was part of it.

Q. That was the main machinery?

A. That was the single main item. The stereotype equipment is probably very close to being as expensive as the press was.

443 Q. And how much do you attribute to the stereotype equipment?

A. I wouldn't have the knowledge that would allow me to give an accurate figure, because I didn't see the bills on a lot of it. But I would judge that the stereotype equipment would have cost maybe a hundred thousand dollars, maybe more.

Q. Was that equipment bought new?

A. Some of it was bought new.

Q. Where did you buy the equipment from?

A. From various suppliers. Some of it we had made there.

Q. What equipment did you have made at Sylacauga?

A. We had our plating tanks made in Sylacauga, we had our—what we call a cyclone, our chip collector set up.

Q. How much did you expend at Sylacauga for such equipment?

A. All we did at Sylacauga was approve the bills and send them to Buffalo for payment and I didn't keep any track. I didn't attempt to keep any record of the amount.

Q. So you have no idea how much that amounted to, is that right?

A. No, I have no idea how much it amounts to. I 444 would say it would be quite a considerable amount, fifty thousand dollars, maybe seventy-five thousand dollars.

Q. In other words, it would be a minimum, you say, of fifty thousand dollars, is that correct?

A. I won't say a minimum. I wouldn't say a minimum, I wouldn't say a maximum because I just don't know.

Q. But it is possible it might have been fifty thousand dollars?

A. It might have been fifty thousand dollars, and it might have gone up to one hundred thousand dollars.

Q. What other expenditures were made that you know of, sir?

A. In the plant itself?

Q. At Sylacauga.

A. We put in a railroad siding down there.

Q. Do you know how much money was involved in putting that in?

A. Somewhere around eight thousand dollars, or nine thousand dollars.

Q. And the other expenses?

A. We put a baler, a paper baler that cost, I believe,—the cost of the baler itself was around five thousand dollars.

Q. Any other equipment?

445 A. We put a pallet strapping station in. It probably cost—and binding and strapping or tying equipment that probably cost maybe three thousand dollars, or four thousand dollars.

Q. Any other equipment?

A. We bought a lot of machinery and tool equipment.

Q. You bought that at Sylacauga?

A. Yes, sir.

Q. Did you get any machinery and tool equipment from International which you used?

A. Did you say did we get any?

Q. Yes.

A. We did. We did get machinery from International which we used.

Q. Now, in regard to the stereotype equipment, did you get any equipment from International?

A. Yes, sir.

Q. And what equipment did you get from International?

A. I think the items that we got from International I have included in that inventory. One of them was the Sta-Hi mat roaster, another was a ring cutter, we got a rectifier. That is all I can remember off hand.

Q. Now, going back to the equipment which you received from International, I believe you stated yesterday that 446 some or all of that equipment was shipped back to International on the second Saturday in October, is that correct sir?

A. The machine shop equipment.

Q. I am talking about machine shop equipment, is that right, sir?

A. That's right.

Q. And by the second Saturday in October you mean the second Saturday in October of this month, is that correct?

A. Yes, sir.

Q. And that would make it October 13, is that correct sir?

A. If that is the date of the second Saturday, that is correct.

Q. Excuse me. I stand corrected. The 14th. And Defendant's Exhibit D-2, which you identified yesterday as the physical inventory taken as of October 16, 1961, was made by you when, on October 16, or prior?

A. October 16.

Q. In other words, that was two days after this equipment left Dixie for International, is that correct, sir?

A. Yes, sir.

447 Q. Now, in regard to machine shop equipment from January 1, 1961, was any other machine shop equipment belonging to International sent back from Dixie other than the equipment sent on October 14?

A. Not that I can remember.

Q. In other words, all this equipment was sent back on October 14, is that correct, sir?

A. Yes, sir.

448 Q. Mr. Clinton, do you still maintain, as you did yesterday, that Defendant's Exhibit D-2, namely the physical inventory of October 16th, 1961, was not prepared for the purpose of this litigation?

A. Positively.

Q. All right. Mr. Clinton, in regard to the opening up of the Sylacauga plant, is it your opinion that the cost of manning will be the same or greater than that of Wilkes Barre?

Mr. MOORE: Pardon me, would you repeat that question? (Whereupon the Court Reporter read the previous question.)

Mr. MOORE: I think you ought to clarify what you mean "manning".

The COURT: Do you mean the number of employees?

Mr. FELDMAN: Yes.

The COURT: Are you assuming they are going to abandon Wilkes Barre?

Mr. FELDMAN: No, sir.

The COURT: How can he answer that then? How can he answer as to the cost of one place without having the 449 same number of employees or of the same class? How can that be compared?

Mr. FELDMAN: Evidently my question wasn't clear.

The COURT: All right. Say that again.

By Mr. FELDMAN:

Q. In computing the cost of the operation of a printing plant in the past, to your knowledge, do printers consider the cost

involved in having man operated machines and other equipment?

The COURT: Does he consider it in the cost of operating?

Mr. FELDMAN: Yes.

The WITNESS: It would have to be.

The COURT: Isn't that self evident? Let's find out how many men he is going to have of a certain group of men for the full production, and how much it is going to cost to pay them and how much it has cost in Wilkes Barre.

Mr. FELDMAN: Well, sometimes it may be more and sometimes it may be less.

The COURT: If he can answer that. Is labor cheaper in
450 the south? Do you contemplate it is going to be cheaper in the south than it is in the north?

The WITNESS: It will not be cheaper, sir.

By Mr. FELDMAN:

Q. Do you contemplate that it will be more expensive than the wages being paid at Wilkes-Barre?

A. I don't imagine there would be much difference. I think a man down there will have to be paid the same rate as he will have to be paid in Wilkes-Barre, or anywhere else.

Q. Will that also apply to Dunkirk?

A. When you say will that also apply to Dunkirk, what comparison are you trying to make? Between Wilkes-Barre and Dunkirk, or Sylacauga and Dunkirk?

Q. Between Sylacauga and Dunkirk.

A. I would imagine Dunkirk is on a par with Sylacauga and I would imagine that Sylacauga will be on a par with Dunkirk, or Dunkirk on a par with Sylacauga.

Q. Now, in testifying yesterday that Dixie would not be able to operate at a profit unless it was able to print some seven and one half million fours per week, did you compute
451 total cost in terms of one thousand fours that would be incurred at Sylacauga?

A. No, sir.

Q. Well, if that is the case, sir, how are you able to make the statement that the operation at Sylacauga would be at a loss or it would not be at a profit unless seven and a half million fours were produced a week?

A. I think I made the general statement, when I said it was my estimate, that it would require a minimum of seven and a half million, and I based that estimate on the fact that we ran

the Peoria plant, when we ran the Peoria plant we printed as much as six million at a considerably less investment and we didn't make money.

Q. Isn't it a fact that when the Peoria plant was operating, you didn't have pre-registry there?

A. That is a fact.

452 Q. Isn't it a fact with pre-registry the efficiency improves?

A. That is a fact.

Q. Isn't it a fact that your efficiency improves materially?

A. I don't think the efficiency would improve enough to offset the deferential in the investment at Peoria as against the investment in Sylacauga.

Q. When did you leave International, sir?

A. When did I leave Wilkes-Barre?

Q. That is right, sir.

A. I left in May 1960. I went back for a week in October 1960.

Q. And how many years did you work at International?

A. I worked at International continuously from October 1936 up until that time with the exception of service years.

Q. And during that time did you learn the names of other printers of color comic supplements?

A. Yes, sir.

Q. And who are some of these people, do you remember them?

A. Who printed color comic supplements?

Q. That is right.

453 A. Greater Buffalo Press, Eastern Color, Southern Color, Star Color, Hearst Corporation—

Q. Do you have any idea how many supplements Southern Color prints during the course of one week?

A. No, sir.

Q. Do you have any idea whether it exceeds three million four hundred thousand or four million fours per week?

A. I don't know, sir.

Q. In regard to Acme, during the period from 1953 to 1954, do you know whether the production at Acme exceeded three million four hundred thousand fours per week?

A. I wouldn't know.

Q. In regard to Star, do you know whether the production there exceeded three million four hundred thousand fours per week?

A. I wouldn't know.

Q. Based upon your experience in the industry, do you hold that these companies in the event they were producing during the period from 1953 to 1956 less than four million fours per week could not operate at a profit?

A. Would you repeat that question?

Mr. MOORE: I think that is an improper question. He 454 is asking him if he knows now what they produce. Now he is asking him for an assumption which isn't in the record and asking him to express an opinion on a plant that he is totally unfamiliar with. The witness testified from his experience at Wilkes-Barre.

The COURT. It seems to me you are asking this man to take into consideration and state his opinion as to whether a profit would result. Unless he can say he knows it is purely speculative.

Mr. FELDMAN: I maintain, Your Honor, that the opinion of this witness is speculative to begin with.

The COURT: He has his own plant, he knows the cost, he knows its efficiency, since he was twenty years old he has been in the printing business and he has been the assistant manager at Wilke-Barre, and now he is in charge. I think he is in a position to estimate what his expected profit would be from 455 his own plant. I think you are asking him to assume too many things about competitors. Unless you can qualify it, do you want to try to qualify it?

Mr. FELDMAN: Your Honor—

The COURT: Sustained. Next question. Let me ask you this; do you have an opinion based on what you know?

The WITNESS: No, sir. I do not. I would say it is impossible to have an opinion.

By Mr. FELDMAN:

Q. At Sylacauga do you know how many fours can be produced or printed by press 2022 in one hour?

A. Going top speed?

Q. First talking about top speed.

A. Top speed, under conditions of production I don't know because we have never produced with the press. I know the speed of the press.

Q. That is the maximum speed?

A. No, I know the geared speed.

Q. What is the geared speed?

456 A. Thirty-six thousand per hour.

Q. What other type of speeds are referred to in the printing field outside of geared speed?

A. Well, we refer to the net per hour. The fact that the press is geared to run thirty-six thousand an hour doesn't mean its going to run that. We may only be able to run it twenty-seven thousand per hour.

Q. When you say geared, is that the maximum?

A. That is the maximum.

Q. Do you have any idea what the average speed would be per hour?

A. No, sir, we never ran the press. I would like to clarify that. We never ran the press under conditions of production. We have tried the press to see if the press would run.

Q. Mr. Clinton, when was it decided that the plant at Sylacauga would have the name Dixie Color, if you can recall?

A. In January of 1957.

Q. Do you recall when Dixie was incorporated?

A. The incorporation began in January 1957. I think it was formalized in April 1957.

Q. And before that time what name was this plant going to be called, do you know?

457 A. Before that time that plant hadn't been named.

Q. What was it referred to at any interval of time, do you know, sir?

A. By the people down there it was referred to as the Funny Paper Plant.

Q. And was it referred to by any other name? Was it ever referred to as International Color Printing Company's Plant?

A. I am sure it must have been.

Q. In speaking to the people down at Sylacauga, what did you refer the plant to, Greater Buffalo or to International?

A. I don't particularly remember ever making such a reference because the people I dealt with all knew me. They knew where I was from, they knew the circumstances, they knew our affiliations with Greater Buffalo.

Q. Now, prior to the time that the land at Sylacauga was deeded to Greater Buffalo, did you speak with people at Sylacauga with regard to the deed being made to Greater Buffalo?

A. I am sure I must have.

Q. Now, did there come a time to your knowledge when you helped in the preparation of a letter for International in which International accepted the deed of the land in the name 458 of International? Do you recall that sir?

A. You will have to repeat that question, sir.

Q. Do you recall preparing a letter for Mr. Gorman and of International in which he accepted the deed of the land on behalf of International?

The COURT: Do you have that letter?

Mr. FELDMAN: Yes, I do.

The COURT: Show it to him.

By Mr. FELDMAN:

Q. I show you the Government's Reply Exhibit 13, attached to the moving affidavits, and show you page two of that exhibit and ask you whether you prepared this document dated June 26, 1956?

Mr. MOORE: Could I have the exhibit number on that again?

Mr. FELDMAN: Yes, it is on the front page, reply Exhibit 13.

The WITNESS: I remember this. I remember the letter.

By Mr. FELDMAN:

Q. Do you know whether the original was sent by Mr. Gorman?

459 A. Offhand I don't know.

Q. You don't know sir?

A. No, sir.

Mr. MOORE: At this point, I haven't seen this document before, but I think counsel ought to correct his statement of what it was. It isn't accepting a deed in the name of International at all. There never was such a deed as he well knows.

Mr. FELDMAN: All I asked the witness was a question and I asked him whether this refreshes his memory.

Mr. MOORE: You characterized the letter.

Mr. FELDMAN: There are two letters. There is the first letter, than there is a second letter. Now, the second letter, Mr. Moore, deals with the transfer of the deed to Greater Buffalo. I am talking about the first letter.

460 Mr. MOORE: Which you characterized as an acceptance upon the part of International as a deed, which the letter does not state. All I am asking you to do is state the fact.

The COURT: What is the fact about International being involved here? Is there some discussion of whether a deed

might eventually be taken in the name of International or something to that effect?

Mr. FELDMAN: Yes.

The COURT: All right. I will read the letter. Ask him about the Greater Buffalo Press, if you want to, in connection with this deed. We are going to have to move along here. I told you before that we are limited in our time here. I want you to have a full examination but we can't waste time on collateral matters if they are not important.

By Mr. FELDMAN:

Q. Well, at that time do you recall drafting two proposed letters for Mr. Gorman on behalf of International?

461 A. When you showed me one which looks familiar to me, but I don't particularly remember two letters.

Q. All right, I will show you the two now, the whole exhibit.

A. This is the one I saw?

Q. Yes, that is the first one. There is the second one.

A. I remember this letter.

462 Q. You remember both letters?

A. Yes, sir.

Q. All right. Now, will you tell me the reason, if you can recall, why you helped draft those two letters?

A. I think those letters were drafted at the request of the Chamber of Commerce or the Industrial Development Board of Sylacauga.

Q. And do you know why they asked you to do that, sir?

A. They wanted to solicit additional moneys to pay for the additional ground that was required for this building.

Q. And what was the necessity of those letters being written, sir?

A. They were going to use those letters to conduct the solicitation.

Q. I show you the same exhibit and ask you to read aloud the second sentence.

A. (Reading) It is my understanding that the purpose of this letter is that they wish to use it as a basis for soliciting the additional \$16,000.00 or \$18,000.00 which they require for the additional land and grading.

Q. Will you continue reading.

A. (Reading:) In other words, to not complicate the

463 thing on the local level we decided it would be better to write a supplementary letter advising that title will be held and the building owned by the Greater Buffalo Press and the deed should be made out accordingly. This is the reason for the second letter.

Q. Was this statement correct when you wrote this memorandum on or about June 18th, 1956?

A. The statement that I just read?

Q. That's about right?

A. Yes.

Q. Mr. Clinton, after Dixie Color was incorporated, did Mr. Gorman become president of that corporation?

A. Yes, sir.

Q. And for how long a period was he president?

A. I don't know, sir.

Q. And is he president at this time?

A. No, sir.

Q. Was he the first president, sir?

A. Yes, sir.

Mr. FELDMAN. I have no further questions.

The COURT. May I ask a question? Mr. Clinton, you told me yesterday that there was no advantage in being close to the newsprint source because the cost is the same but you

464 also pointed out that you expected a material advantage in the cost of delivery of your product from Sylacauga to the southeast cities that you served, and you also told us that there is no advantage that you knew of in the cost of labor between the north and the south. Are there any other advantages that you contemplate profit wise or otherwise in being at Sylacauga in opening this plant?

The WITNESS. I would say, sir, that the big advantage is going to accrue to the newspapers on the transportation savings from the plant.

The COURT. That is the same thing you said yesterday?

The WITNESS. Yes.

The COURT. There is no other apparent advantage in being down there rather than in the north, say, Wilkes-Barre?

The WITNESS. No, sir. I think the big advantage is going to accrue to the newspapers on transportation savings.

465 The COURT. All right.

REDIRECT EXAMINATION

by Mr. MOORE:

Q. I just have one or two questions. Well, Mr. Clinton, as far as the citizens of Sylacauga were concerned who were active in promoting this plant, it didn't make any difference to them whether the plant was run by International, Greater Buffalo or Chic Maid Hat Company, did it?

A. No, sir. I think probably seventy-five percent of the people who are aware of the plant down there think it is mine.

Q. The plant has never been in production, has it?

A. No, sir.

Q. And the reason you haven't opened it is the existence of this restraining order?

A. Yes, sir.

Mr. MOORE. I think that is all.

The COURT. Step down. Next witness.

(Witness excused.)

WILLIAM J. HAMMOND, called as a witness by the defendants and being first duly sworn, testified as follows:

466 The CRIER: What is your name, sir?

The WITNESS: William J. Hammond.

DIRECT EXAMINATION

By Mr. MOORE:

Q. Where do you live, Mr. Hammond?

A. Lakeview, New York.

Q. And what is your occupation?

A. Treasurer of the Greater Buffalo Press.

Q. And how long have you been employed by Greater Buffalo Press?

A. I have been associated since 1930 and on an actual full-time basis since 1945.

Q. And what has been your training in the business, what have you done?

A. Mostly along the lines of finance and accounting.

Q. And is that what you have done for Greater Buffalo Press over the years?

A. That's right.

Q. Now, are you familiar with the history of Greater Buffalo Press?

A. Yes, I am.

Q. And when was the company established?

A. The company was established in 1926.

467 Q. And do you know what the initial capital investment in the company was?

A. It was \$3,000.00.

Q. And since 1926 has there been any other investment in the company from outside sources?

A. None from outside sources. It has always been retained earnings.

Q. And has the company been built entirely on retained earnings?

A. Entirely.

Q. When did the company start in the business of printing color comic supplements?

A. In 1933.

Q. And do you know what their first business was?

A. The first contract was with the Syracuse Herald American.

Q. That was the first contract they had for printing color comic supplements?

A. That's right.

468 Q. Did they over the years acquire contracts with other newspapers?

A. That is right.

Q. Now, are you familiar in general with the business that is now done by Buffalo Greater Press in this field of printing the colored comic supplements?

A. I am familiar with all our accounts, yes, sir.

Mr. MOORE: Will you mark this for identification?

(Thereupon document referred to was marked Exhibit D-4 for identification.)

Mr. CARLSON: Is this something we have seen before?

Mr. MOORE: No.

Mr. CARLSON: Do you have a copy for me?

Mr. MOORE: Not right now I don't.

By Mr. MOORE:

Q. I show you a list marked D-4 for identification and ask you did you prepare that list?

A. I prepared it.

Q. Will you describe what it is?

469 A. It is a list of printing jobs performed by Greater Buffalo Press.

Q. And the list is as of what time?

A. May 2, 1961.

Q. And this list reflects the name of the city where the paper is located?

A. That is right.

Q. And—

A. The circulation.

Q. The circulation of the paper?

A. That is right.

Q. And what is the third column?

A. The third column indicates when we acquired it. Not the date we acquired it, the fact it was acquired by us either from the beginning of the inception of the comic section, or that they came to us directly from their own plant.

Q. In other words, you have listed over in the third column, you represent the circulation of papers where you have obtained the contracts where they formerly printed their own?

A. Printed their own sections.

Q. I think the fourth column reflects the same figure for papers acquired since 1954?

A. Since 1954.

470 Q. Now, from this computation did you arrive at a figure which shows what percentage of the color comic supplement printing business, enjoyed by Greater Buffalo Press, was obtained from newspapers who had formerly printed their own color comic supplements?

A. Or came to us from the inception of their section; yes I did.

Q. What percentage of your business is that?

A. Eighty-eight and nine-tenths percent.

Q. Where are the color comic supplements printed by Greater Buffalo Press?

A. At the present time they are all printed in our plant in Dunkirk, New York.

Q. Do you also have a wholly owned subsidiary in Texas?

A. Yes, we do.

Q. What is the name of that?

A. Southwest Color Printing.

Q. When was that company set up?

A. You mean when it was incorporated?

Q. When was the plant—

A. The plant opened in 1958 in production.

Q. When was the plant started?

A. Construction was started the end of 1955 or the
471 early part of 1956.

Q. When was the company first set up, do you recall?

A. The company was incorporated in 1956. I said, Mr. Moore, that all of these jobs are printed in Dunkirk. You refresh my memory, some of them were printed—

Q. In Lufkin?

A. Yes, some of them were sublet to International Color Printing at Wilkes Barre.

Q. In other words, some of those jobs are runs which you have sent down to Wilkes Barre?

A. That is right.

Mr. CARLSON: Are you still referring to this exhibit that was marked for identification?

Mr. MOORE: Yes, sir. I will offer it in evidence.

The COURT: Any objection?

Mr. CARLSON: I have a general objection to it, to the exhibit.

The COURT: Do you want to look at it?

Mr. CARLSON: Yes. I have a general objection to the exhibit that it reflects matters not pertinent to this law suit,
472 namely, the printing of color comic supplements not in the business, in the color comic supplement business, but rather things done at home, such as shoes made in an Indian teepee, that is reflected in the figures. The figures are immaterial to the basic question, any basic question in the law suit.

The COURT: I don't get the "Indian teepee".

Mr. CARLSON: The analogy is a simple one, that is a—

The COURT: Does that say anything about an Indian teepee?

Mr. CARLSON: No, sir.

The COURT: Overruled, received. Do you want to give counsel a chance to examine that?

Mr. MOORE: Yes.

473 By Mr. MOORE:

Q. Now, are you familiar with the standard form of contract on which Greater Buffalo Press does this color comic supplement business?

A. Yes, I am.

Q. What are the terms of those contracts, the length?

A. Generally, one year.

Q. What is the provision about renewal?

A. They are automatically renewed for one year. They are subject to cancellation on sixty days for a number of reasons, four or five reasons.

Q. And do you have any business under contract now at Greater Buffalo that is not subject to the sixty day cancellation?

A. None.

Q. Cancellation by the newspapers?

A. By the newspaper.

Mr. MOORE: Will you mark this for identification?

The CLERK: D-5 marked for identification.

(Whereupon a letter was marked Exhibit D-5 for identification.)

By Mr. MOORE:

474 Q. Do you recall when consideration was first given by Greater Buffalo to the establishment of a plant in the south, southeast?

A. Yes, I do.

Q. When was that?

A. Oh, we talked about it as far back as 1945, 1946.

Q. Now, had investigations been made of various places for a plant?

A. Yes.

Q. What was the nature of those investigations? Who conducted them?

A. One of the officers of our company made a trip through the south to look at plant sites.

Q. When was that?

A. Oh, I guess maybe around 1948.

Q. Now, did there come a time when Greater Buffalo made a commitment to one of its plants, one of the newspapers for which it printed, that it would build a plant in the southeast?

A. Yes, we did.

Q. I show you Exhibit D-5 for identification, and ask you if you can identify that as a letter, a copy of a letter, from the files of Greater Buffalo Press?

475 A. This was taken out of our contract file with the Atlanta Journal Constitution.

Q. And is that file kept in the ordinary course of your business?

A. Yes, we still have the file.

Q. And this is a record from that file kept in the ordinary course of business?

A. That's right.

Q. Now, do you recall——

Mr. CARLSON: Excuse me, just a moment.

Mr. MOORE: I was going to let you read that. You have two of you there. It is a short letter. I was trying to hurry. If you want to hold up proceedings, why all right.

I will offer this letter in evidence.

Mr. CARLSON: No objection.

The COURT: Received.

The CLERK: D-5 marked in evidence.

(Whereupon Exhibit D-5 was marked in evidence.)

By Mr. MOORE:

476 Q. Do you recall the time when Greater Buffalo acquired the stock of the International Color Printing Company?

A. Yes, I do.

Q. And was there any change in the management of International subsequent to that acquisition?

A. No change in the management.

Q. Were there changes undertaken in the plant of International?

A. Yes, there were.

Q. In general, what was the nature of that change?

A. Well, the nature of the change was that they proceeded to adopt our methods of pre-registry, and also adopt our methods of running third page plates on their presses. They adopted our clip arrangements, they reworked all their cylinders in accordance with the way our cylinders are arranged, and other mechanical changes.

Q. How was that work financed at International? How did they pay for it?

A. Well, some of the work we had done, some of the stereotype machinery we had built for them, and a lot of the parts that were necessary to be made special by machine shop. We placed the orders from them and all of those changes 477 were billed through the Greater Buffalo Press.

Q. Was Greater Buffalo Press paid currently for this work?

A. No, because building some of the stereotype machinery was a matter that spread over a couple years' time.

Q. Well, what I am getting at is, was there a deferral of payment on some of this work?

A. Yes, there was, Mr. Moore.

Q. And to that extent Greater Buffalo financed the work, didn't it?

A. Not only to that extent, but also to the extent of the talent involved.

Q. All right. Now, do you recall when it was determined to build a plant in Sylacauga, Alabama?

A. Yes, I do.

Q. Who made that determination?

A. Mr. Walter Koessler.

Q. Now, appropos of that determination, did you go to Sylacauga?

A. Yes, I did.

Q. Did you go there once, or on more than one occasion?

A. I went there twice.

Q. What did you do while you were there? In general, what was the nature of your mission?

478 A. The first time I went there in company of Bill Gorman and Joe Clinton in January, 1956, I think it was.

Q. And what was the purpose of your trip?

A. Well, we went there to consult an attorney, to start the incorporation proceedings, and also to discuss with the people down there matters relative to the acquisition of the property.

Q. Now, after your trip to Sylacauga and after the determination to build the plant had been made, was there an arrangement made for the financing of this plant, who was to finance it?

A. Well, in the first instance—

Q. Well, finally.

A. Well, finally the Greater Buffalo Press financed the plant.

Q. Now, are you a director of Dixie Color Printing Company?

A. Yes, sir.

Q. And you were one of the incorporators, is that right?

A. One of the incorporators.

Q. Do you know who the original Board of Directors was, or the Board of Directors of that company?

A. Of Dixie Color?

479 Q. Yes.

A. Yes, it was Joe Gorman, John W. Koessler, Kenneth L. Koessler, Joseph D. Clinton and myself.

Q. And John W. Koessler and Kenneth Koessler are both officers of Greater Buffalo Press, are they not?

A. They are.

Q. Who owns the stock of Dixie Color?

A. The Greater Buffalo Press owns all of the stock of Dixie Color.

Q. Has anybody else ever owned any stock?

A. No one else has ever owned any stock.

Q. And what was the initial investment in Dixie Color by Greater Buffalo?

A. Fifty thousand dollars.

480 Q. And when was that made?

A. When cash was actually put in or subscribed, you mean, Mr. Moore?

Q. When was it subscribed?

A. It was subscribed in April of 1957 at the time of the incorporation.

Q. And subsequently the subscription was paid?

A. Subsequently the subscription was paid.

Q. Now, has Dixie Color ever conducted any operation of any kind?

A. Never.

Q. Now, how has Dixie Color been financed?

A. It has been financed entirely by Greater Buffalo Press.

Mr. MOORE: Now, will you mark this for identification?

The CLERK: D-6 for identification.

(Whereupon document referred to was marked Exhibit D-6 for identification.)

By Mr. MOORE:

481 Q. Now, I show you what has been marked Exhibit D-6 for identification, which appears to be five pages, containing handwritten entries and I ask you if you prepared that document?

A. No. That was prepared by Mr. O'Connor, our office manager.

Q. Well, was the document prepared from—

A. At my request.

Q. And are the entries taken off the books of account?

A. These were taken from the records, yes.

Q. And are you familiar with the records?

A. Yes.

Q. They are kept under your supervision?

A. They are.

Q. Now, I ask you to describe what that document reflects.

A. This is the list of payments month by month that were made by Greater Buffalo Press in the course of construction of the building at Sylacauga, Alabama.

Q. These are payments made for the construction of the plant itself, is that right?

A. Of the building.

Q. The first payments were made March 25th, 1957?

A. That's right.

Q. And this goes down to when?

A. December 31st, 1960.

482 Q. And in that period how much did Greater Buffalo pay out for the building at Sylacauga?

A. Well, Greater Buffalo paid for all of it.

Q. Well, how much?

A. There were some advances made as a matter of expediency to various contractors by International Color. The extent of that was \$79,000.00 and the other \$346,000.00 was paid directly to contractors by Greater Buffalo Press.

Q. All right—

A. But ultimately month by month we reimbursed International for whatever advances they made.

Q. Now, is this the fact, that for this period up to December 31st, 1960, Greater Buffalo had invested in that plant \$426,588.28?

A. That is correct.

Q. And included in that amount was \$79,745.40 which had originally been paid by International, is that right?

A. That's right.

Q. And that \$79,000.00 figure had been repaid to International by Greater Buffalo?

A. That's right, month by month.

Mr. CARLSON: If the Court please, I haven't been objecting to this leading of the witness because in some ways it does save time but I think Mr. Moore should let the witness testify.

The COURT: Is there any dispute on that? Is there any dispute on those facts?

Mr. CARLSON: Yes, I believe there is, Your Honor, because our position is this, and I think it has been made known to Your Honor prior to this time, that this was a captive plant and although the facts and figures may be accurate or they may not be accurate, but they are entries made by these particular persons in the course of business for whatever business purposes they may have, so that in this particular chart, Mr. Moore did not establish the date it was prepared and he hasn't offered it in evidence but it is in the nature of not the best evidence of the figures and I am not saying I was prepared to object to it because of that, but this is prepared for litigation and it is in the nature itself of a self-serving declaration these

484 people are making from the stand and I don't want them to carry this too far and I don't think I can permit Mr. Moore to carry this too far.

The COURT: You were leading somewhat.

Mr. MOORE: I was leading. I want to know from the Government right now if the Government takes the position that our books and records are false? Do you want to answer that?

Mr. CARLSON: The answer to that is no.

The COURT: Are you going to offer that in evidence?

Mr. MOORE: I want to offer this in evidence, Your Honor, and if there is a question of the best evidence, I am prepared—

The COURT: I am not concerned about that. It is a summary of the witness's testimony, as far as I am concerned and if you want to bring anything else out through this witness, why, he will have to testify.

Mr. MOORE: Well, I will offer it in evidence.

485 Mr. CARLSON: On the basis of the qualification that I have indicated to you and to expedite the proceedings, no objection.

The COURT: All right, received in evidence.

(Thereupon Exhibit D-6 for identification was received in evidence and marked D-6 in evidence.)

486 Q. In addition to the \$426,588.28 that Greater Buffalo spent on the plant itself, did Greater Buffalo make expenditures for machinery and equipment?

A. Yes, we did.

Q. And do you have a record, or do you know the extent of those expenditures up to a stated period?

A. Up to the 1st of October.

Q. The 1st of October, 1961?

A. 1961. \$380,000.00. Do you want the figure on the building up to October 1st?

Q. If you have it.

A. \$450,000.

Q. Now, in addition to the amounts paid by Greater Buffalo to International as reimbursements reflected in Exhibit D-6, did Greater Buffalo reimburse International for expenditures they had made on machinery and equipment for the plant?

A. Yes, we did.

Mr. MOORE: Will you mark this for identification?

(Thereupon Documents were marked D-7 for Identification.)

By Mr. MOORE:

487 Q. I show you D-7 for Identification and ask you if you can identify what those documents are?

A. These are copies of statements of account by International Color to Greater Buffalo Press.

Q. Those are what we would call invoices?

A. Yes, invoices.

Q. And running from a period of July 13, 1960, the final invoice is January 19, 1961?

A. That is right.

Q. And just to describe the exhibit, these are invoices that appears on their face for what?

A. For expenditures by International Color on Press 2022.

Mr. MOORE: I will offer these in evidence.

Mr. CARLSON: Do you have the originals on these with you?

Mr. MOORE: No. I can get them for you.

Mr. CARLSON: May I ask one question?

The COURT: Yes.

Mr. CARLSON: One question concerning these documents.

By Mr. CARLSON:

Q. Mr. Hammond, there is a note on the front: "Paid 1/30/61." There are no notes on the invoices, on the 488 photostats of the other invoices as to paid.

A. You see, there is a running cumulative total there.

Q. I want to establish whether or not, this is very simple, whether or not the notation on the front relates to all of the documents involved or just —

A. All of them. The sum total on that top page is the amount that was paid.

Mr. CARLSON: No objection.

The COURT: Received, mark it.

(Thereupon Exhibit D-7, previously marked for Identification, was marked and received in Evidence.)

The COURT: Mr. Moore, do you have any other exhibits for this witness?

Mr. MOORE: I think I may have a couple more, Your Honor.

The COURT: I have to make a phone call. I would like you to show them to him during the short recess. Then we will be prepared to deal with them.

Mr. MOORE: Yes, Your Honor.

(Thereupon a short recess was taken.)

489 (Proceedings after recess.)

By Mr. MOORE:

Q. Mr. Hammond, Exhibit D-7 in Evidence, these invoices you have described as invoices received by Greater Buffalo from International for material and work done on press 2022 is that correct?

A. That is correct.

Q. And they total \$130,933.18?

A. That's right.

Q. Were they paid?

A. They were paid.

Q. When?

A. In January 1961.

Q. Now, subsequent to receipt of these invoices did you receive additional invoices from International for work done on press 2022?

A. Yes, monthly invoices.

Mr. MOORE: Will you mark this for identification?

The CLERK: D-8 for Identification.

(Thereupon Photostatic Copies of Invoices were marked D-8 for Identification.)

490 By Mr. MOORE:

Q. I show you Exhibit D-8 for Identification, which purport to be photostatic copies of five invoices from International to Dixie Color, which refer to labor performed on press 2022, and ask you if those were received by Greater Buffalo?

A. Yes they were.

Q. And were they paid?

A. They were paid.

Mr. MOORE: I will offer this in evidence.

Mr. CARLSON: One question on these.

Mr. MOORE: Yes.

Mr. CARLSON: Do these represent accurate copies of the originals of the documents?

The WITNESS: They are photostats of originals.

Mr. CARLSON: Excuse me. Do they represent accurate copies?

The WITNESS: They are photostats of originals.

Mr. MOORE: I submit that is an answer Your Honor.

Mr. CARLSON: No objection.

The COURT: Received and marked.

The CLERK: D-8 marked in Evidence.

(Thereupon Photostatic Copies of Invoices previously marked D-8 for Identification were marked and received in Evidence.)

By Mr. MOORE:

Q. Now, prior to the receipt of the first invoice in D-7, which is dated July 13, 1960, did the books of Greater Buffalo reflect or contain any entries pertaining to press 2022?

A. Not prior to that time.

Q. And upon the receipt of these invoices were entries made in the books of Greater Buffalo reflecting the receipt of them?

A. They were.

Q. And how were they carried?

A. We carried that under our asset account, machinery and equipment for Dixie Color.

Q. Prior to the payment how did you carry the invoice which had been received but not paid.

A. We carried it as accounts payable.

Q. Then when you paid it, it was transferred to the asset account?

A. Well, no. At the time it was accrued on the books as an account payable, it was carried as an asset.

Q. Now, to date how much has been expended by Greater Buffalo on Press 2022 including the payments reflected in D-7 and D-8?

A. Approximately \$216,000.00.

Q. Are there any outstanding invoices from International to Greater Buffalo that haven't been paid, invoices for work respecting Sylacauga?

A. Everything up to the present moment is paid.

Q. Now, do you know whether or not a loss is presently being incurred by Dixie Color by virtue of the fact that this plant isn't in operation?

A. Yes, I do.

Q. Do you know the extent of that loss?

A. Approximately \$20,000.00 a month.

Q. You referred earlier to the standard contract—strike it out. Are you familiar with the manner in which the price is determined for the printing of color comic supplements by Greater Buffalo Press?

A. Yes, I am.

Q. And is there some formula used in connection with that?

A. We use a standard formula.

Q. Is that standard formula universally used with all your accounts?

493 A. That is right.

Q. And can you briefly describe how the formula works, how the price is determined?

A. Yes. We have a basic charge for an initial make ready.

Q. That is the charge for making ready the plates?

A. That is right, the press plates.

Q. All right. What else?

A. And the cost per thousand is computed by dividing the quantity into that basic cost. That gives us the cost per thousand for the make ready.

Q. What is the next factor?

A. The next factor is paper.

Q. Is a computation made of paper per thousand?

A. That is right, and ink.

Q. Now, in connection with paper, in making computations do you use the price you pay for the paper?

A. We use a delivered price we pay for the paper, plus a handling cost.

Q. Is the handling cost based on your own cost experience?

A. Based on our costs of unloading, storing and shipping the material.

Q. You don't make any money on the paper?

494 A. We don't make any money on newspaper print as such, no.

Q. What is the next factor?

A. Ink.

Q. Is ink handled on the cost basis?

A. Ink is handled on the cost basis.

Q. What is the next factor?

A. The press time.

Q. That is labor?

A. Labor for running of the press.

Q. And what is the next factor?

A. Bundling.

Q. What is that based on?

A. Wrap and ship we call it. That is based on actual labor costs.

Q. What is the next factor?

A. That is it.

Q. Now, in your price structure do you pay the transportation cost or does the customer pay it, the newspaper?

A. We pay it in most instances.

Q. And are you reimbursed for it?

A. We are reimbursed, it is billed.

Q. So that the actual cost of transportation is borne by the—

A. By the newspaper.

495 Q. If there is an increase in transportation costs, they bear that?

A. They bear any increase.

Q. If there is a decrease they have the benefit of that?

A. They receive the benefit of the decrease.

Q. Now, are you familiar with the runs presently printed by Greater Buffalo under the contracts that Greater Buffalo holds with newspapers for delivery in the ten states that are set forth in the Government's proposed decree in this proceedings?

A. Yes, I am familiar with them.

496 Mr. MOORE: Just for the record, those states are Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina and North Carolina. Now, would you mark this, please?

The CLERK: Exhibit D-9 for Identification.

(Thereupon Document was marked Exhibit D-9 for Identification.)

By Mr. MOORE:

Q. Now, I show you a document which has been marked Exhibit D-9 for Identification and ask you if you prepared that document?

A. I did.

Q. And just to shorten it, if I can, does this document contain the locations of the newspapers in these ten states?

A. Yes, it does.

Q. Where the printing of the colored comic supplement is done at Dunkirk?

A. That's right.

Q. Now, are all of these contracts of these six newspapers held by the Greater Buffalo Press?

497 A. Held by the Greater Buffalo Press.

Q. What about Fort Lauderdale?

A. Fort Lauderdale, actually that is an N.E.A. account.

Q. And the circulation reflected by this exhibit for identification shows a circulation in fours of 3,434,000 per week, is that right?

A. That is what it shows.

Q. Now, is it your understanding that this is the extent of the printing which would be permitted at Sylacauga pursuant to the Government's proposed order?

A. That is my understanding.

Q. Now, if the Government's order were interpreted to include any printing where Greater Buffalo was not itself the contract holder, it would eliminate Fort Lauderdale, would it not?

A. Yes, it would.

Q. So your total of 3,400,000 would be reduced by 187,000?

A. That's right.

Q. Now, have you also computed on this exhibit the weekly savings in transportation that would be enjoyed by these six papers?

A. I figure that would be \$1,348.54 a week.

Q. And how did you arrive at that computation?

498 A. I took the present rate from Buffalo to these destinations and the rate from Sylacauga to the same destinations and the difference represents the savings.

Mr. MOORE: I will offer this in evidence.

The COURT: Any objection?

Mr. CARLSON: As far as the weight of the evidence is concerned, I think this has very little weight and there will be no objection to it.

The COURT: All right, received.

(Thereupon Exhibit D-9 for Identification was received in Evidence.)

Mr. MOORE: Would you mark this document, please?

The CLERK: Exhibit D-10 for Identification.

(Thereupon Document was marked Exhibit D-10 for identification.)

By Mr. MOORE:

Q. Now, I show you Exhibit D-10 for Identification and ask you if you prepared that?

A. Yes, I did.

Q. If I may ask a leading question to shorten it up, does this list represent a selection of runs which are presently printed at Wilkes-Barre by International for the account of King and for shipment to southeastern destinations?

A. It does.

Q. And this list does not contain all of those runs in the southeast, does it?

A. No, it does not.

Q. And were these selections made to illustrate transportation savings that would be effected if these runs could be printed at Sylacauga?

A. Yes. These are the larger ones and there are eight on here, believe.

Q. And if these eight runs were printed at Sylacauga, that would increase the production there by how many fours?

A. 4,449,000.

Q. And what would be the transportation savings per week?

A. The transportation for this group of newspapers would be \$1,764.00 weekly.

Q. Per week?

A. Per week.

Mr. MOORE: I will offer this in evidence.

Mr. CARLSON: I would like to ask a question about it.

Did you prepare this yourself?

The WITNESS: Yes, sir.

Mr. CARLSON: Did you prepare it from the books of International? Did you get your information from the International? Did you get your information from the International books?

The WITNESS: Yes.

Mr. CARLSON: Okay.

The COURT: Received.

(Thereupon Exhibit D-10 for Identification was received in evidence.)

By Mr. MOORE:

Q. Now, you are, as you testified, fairly familiar with the total investment in the Dixie Plant at Sylacauga?

A. Yes, I am.

Q. And you have been involved in the financial end 501 of this business for how many years?

A. Thirty years.

Q. In your opinion can the Sylacauga plant be operated profitably on a production limited to four million fours per week?

A. I would say no.

Q. And in your opinion what is your opinion as to the volume that is necessary there to insure a profitable operation.

A. Well, when you say insure, Mr. Moore, that is—

Q. Well, to make it profitable or possible?

A. Well, we hope—I think it would require a minimum of seven or eight million four-page sections to make it feasible.

502 Mr. MOORE: Now, turning to another subject, I am going to mark this. Will you mark this for identification only?

The CLERK: D-11 for identification.

(Whereupon a document was marked Exhibit D-11 for identification.)

The COURT: I would like to ask the witness a question. You just expressed the opinion that you would have need of some eight million fours in Sylacauga in order to show a reasonable profit.

The WITNESS: Yes.

The COURT: Assuming that were to be done, what is your opinion as to the future of your plant in Wilkes-Barre?

The WITNESS: Well, that would reduce the Wilkes-Barre operation by about ten percent of what they are presently doing.

503 The COURT: Let's assume you don't get any of this possible business from Philadelphia and other eastern papers.

The WITNESS: I think that the Wilkes-Barre plant would still remain on a profitable basis.

Mr. MOORE: Will you stipulate that D-11 for identification is a survey referred to in the affidavit, the original affidavit

of Mr. Carlson in this proceeding, which is referred to as the Gorman survey?

Mr. FELDMAN: What year is that?

Mr. MOORE: 1955.

Mr. CARLSON: What page are we on?

Mr. MOORE: I just wanted to take the book first.

Mr. CARLSON: I haven't had a chance to compare these two copies.

Mr. MOORE: Well, subject to correction.

Mr. CARLSON: Yes, on that basis, subject to correction, I so stipulate.

Mr. MOORE: Will you mark this please?

The CLERK: D-12 marked for identification.

504 (Whereupon a document was marked as Exhibit D-12 for identification.)

By Mr. MOORE:

Q. Now, I show you Exhibit D-12 for identification and ask you if that represents a copy of the last summary page in D-11 for identification?

A. Yes, it does.

Q. And is that a summary of the so-called 1955 Gorman survey of the market?

A. That is what it is.

Q. Of the ready print market, he calls it?

A. That's right.

Q. The ready print is color comic supplements in the trade, is it not?

A. That's right.

Mr. CARLSON: May I see this? Your Honor, excuse me. This is one that Mr. Moore did not show me at the recess. That is why the little delay.

The COURT. All right.

Mr. MOORE. I am sorry. I thought you were very familiar with it because you made a rather protracted affidavit 505 on the subject?

By Mr. MOORE:

Q. Now, directing your attention to this exhibit, D-12 for identification, the so-called Gorman survey for 1955, purports to show the printing in fours at various color printing plants, does it not?

A. That's right.

Q. And the line marked "total", is the total at these various plants?

A. That's right.

Q. Now, I note the last item on that page, "O. P.", what does that stand for?

A. Owned Plants.

Q. And what is meant by "owned plants"?

A. That means newspapers who print their own sections, home plants, owned plants it is called.

Q. And, the next item proceeding to the left is marked "Hearst".

A. Hearst.

Q. And what printing is that?

A. Well, that is the printing that they do for themselves substantially in their Chicago and San Francisco plant.

506 Q. And in Mr. Gorman's survey of the market he included those number of fours in the total, did he not?

A. He showed them as part of the market.

Mr. MOORE. Does your Honor want to have one of these before you?

The COURT: I have one.

By Mr. MOORE:

Q. Now, are you familiar with the affidavit made by Mr. Carlson in this proceeding, the original affidavit?

A. Yes, I am.

Q. And did you make an analysis of that affidavit, the figures contained in that affidavit with reference to the Gorman survey?

A. I did.

507 The COURT. I want to ask the witness a question. Is Sylacauga presently equipped to turn out seven to eight million fours at this time?

The WITNESS. It is equipped to do it.

The COURT. You mean you have your machinery?

The WITNESS. They would probably turn out considerably more than that.

The COURT. What I am trying to say, the International plant in Wilkes-Barre, as I recall the witness Gorman, he said they had pre-registry installed there and now the production has gone up twenty-five percent of that as a result of that, per printing hour. You don't have any need of that machinery in Sylacauga to meet your commitments?

The WITNESS. We have the same type of machinery in Sylacauga.

The COURT. You are fully equipped?

The WITNESS. Fully equipped.

The COURT. All right.

By Mr. MOORE.

508 Q. You have copies of the analysis you prepared of the Carlson affidavit?

A. Yes, I have them in my bag.

Mr. MOORE. Will you get those for me?

The WITNESS. I better get them, may I?

The COURT. Yes. While the witness is looking for that why don't you run across the top and give me what those initials mean.

Mr. MOORE. Yes. I think we have no dispute about it. I.C.P. stands for International Color Printing. G.B.P. stands for Greater Buffalo Press. B.C. is Buffalo Color Press. Acme is Acme Printing. E.C. is Eastern Color. W.C. is World Color. S.C. is Southern Color and F.W. is Fort Worth.

The COURT. All right. Thank you.

Mr. MOORE: Will you mark this for identification?

(Thereupon document referred to was marked D-13 for identification.)

By Mr. MOORE:

509 Q. I show you Exhibit D-13 for identification and ask you if this is an analysis you prepared of the Gorman survey?

A. Yes, sir, it is.

Q. And of the Carlson affidavit?

A. Yes, it is.

Q. Now, are all of the figures on this exhibit D-13 for identification taken directly from the Gorman survey which is marked D-14?

A. D-12, isn't it?

Q. D-12, I'm sorry.

A. They are taken from D-12. This was 13?

Q. Yes. Now, in your first column you have "per affidavit fours percentage of the market," what does that column—

A. That was the way Mr. Carlson showed it in his affidavit. However, he did not show the percentage figure, he showed the

number of fours. In that same manner, he starts off with all supplements, one hundred thirty-two million eight thousand and three.

Q. Now, did you find that Mr. Carlson in his affidavit in setting up the number of fours attributed to Greater Buffalo included in that total approximately two million fours which were Canadian printing?

A. Yes, that total of 28 million that he has listed for 510 our account includes 1,954,850 of Canadian circulations.

Q. Now, did you in the next column adjust that figure to eliminate the Canadian circulations?

A. I eliminated that.

Q. Did you find too that Mr. Carlson in computing International's total had in fact excluded their foreign market from it?

A. Yes. He only shows there 27,237,000 whereas under the heading of I.C.P. there is a Spanish market of 546,000, and the Stars and Stripes, 190,000 that he dropped off.

Q. In your second column did you exclude that foreign printing, both in the total market and from the printing attributable to Greater Buffalo and International?

A. You mean in column three?

Q. In column three.

A. All the foreign market was excluded.

Q. In arriving at his percentage, Mr. Carlson disregarded entirely, did he not, the printing which was done by newspapers themselves of their own supplements?

A. To the extent of 44,208,581.

Q. And did he disregard the printing that was attributed to Hearst in the Gorman survey? 511

A. He ignored that on his affidavit.

Q. And in your third column?

A. He also dropped off Fort Worth and World Color.

Q. Well, in your third column you put those back in?

A. I put them back in where they belong.

Q. And in the fourth column you figured a percentage just of the printing done by the Color Comic Supplement printers?

A. Well now, let me digress —

Q. Well, is that what it was? Is that a percentage?

A. That is a percentage, that's right.

Q. All right, and in the fifth column have you computed the percentage applicable to each of these printers for the entire market reflected in the Gorman survey?

A. Yes, I did.

Mr. MOORE. I will offer Exhibit D-12 and Exhibit D-13 in evidence.

Mr. CARLSON. No objection.

The COURT. All right, received.

(Thereupon Exhibit D-12 and D-13 were received and marked D-12 and D-13 in evidence.)

Mr. MOORE. You may ask.

The COURT. I wonder if I could ask, as far as this 513 subject. You are familiar, I take it, with the operation of Sylacauga down there and what is expected to be done if and when it opens. Do you know of any agreement, written or otherwise, whereby Greater Buffalo Press or the Dixie Color Corporation or any other subsidiary of Greater Buffalo Press has an arrangement with Hearst or any subsidiary of Hearst to buy newsprint at a price?

The WITNESS: We have no arrangement with anybody. We have no newsprint arrangement or commitment.

The COURT: Do you recall there was some testimony that Hearst has a contract--

The WITNESS: Hearst had a contract at one time.

The COURT: You have nothing in the way of any option to buy any portion of that newsprint from Hearst?

The WITNESS: No.

CROSS EXAMINATION

By Mr. CARLSON:

Q. Mr. Hammond, I hand you defendant's Exhibit 514 number 4 and ask you what date that exhibit bears?

A. May 2nd, 1961.

Q. Does that mean it was prepared on that date, this exhibit was prepared on that date?

A. It was prepared—I think that was an issue date of a Sunday newspaper. It may have been prepared a few days later. I haven't got a calendar handy but I think—

Q. You testified it was about that—

A. I think probably May 2nd is an issue date of a newspaper.

Q. I think you testified—

A. No, it isn't Mr. Carlson. That must be the day I prepared it.

Q. I don't recall whether or not you testified that this was prepared for the purpose of this litigation. Did you so testify or not?

A. I didn't.

Q. Was it?

A. I didn't testify to that.

Q. Was it?

A. Yes, it was.

Q. Was this exhibit prepared for the purpose of this litigation?

515 A. Yes, it was. I prepared that in anticipation of the trial proceeding in July which never took place.

Q. I think you also testified that there was a right in newspapers that are customers of Greater Buffalo Press to cancel on sixty days notice?

A. That's right.

Q. Is that an automatic cancellation that—

A. They may cancel for any number of reasons, four or five reasons.

Q. So that it is not cancellable at will?

A. Practically they may cancel if they are dissatisfied with the quality of the work, the service, the cost, if they discontinue their publication. I can't remember all of them, but those are the essential ones that gives the newspaper the right to cancel the contract on sixty days notice.

Q. This relates to cancellation for cause, is that correct?

A. Well, sure, you have got to have a reason.

Q. I think you also testified in the course of your examination by Mr. Moore as to various and sundry mechanical changes that were made at Wilkes-Barre as a result of certain information obtained from Greater Buffalo Press, is that correct?

A. Yes.

516 Q. How did you obtain your information concerning the changes that were made at Wilkes-Barre?

A. Well, in my position I consulted on a lot of matters and these things were discussed in my presence; I knew that they were being undertaken; we had those plans and doing those things.

Q. Are you a mechanical man, Mr. Hammond?

A. No, I am not.

Q. You testified that Greater Buffalo Press financed the Sylacauga plant?

A. That's right.

Q. In the last instance. You started to say that somebody financed it initially, I thought you started to say. Is there a difference in who financed the plant initially and who finally financed it?

A. Nobody put a nickel in it if that is what you mean.

Q. There is no other financier?

A. There is nobody else.

Q. That is your testimony?

A. That is what I am saying.

Q. What did the plant at Lufkin cost, Mr. Hammond?

A. Well, I would say now that our investment in the Lufkin plant is pretty close to \$2,000,000.00.

Q. What did the plant at International cost?

517 A. You mean what did we pay for it?

Q. Yes?

A. \$575,000.00.

Q. What is the total production at Lufkin today?

A. In terms of what?

Q. In terms of fours per week.

A. Well, I don't deal in those figures. To me this four-page gimmick has no particular meaning.

Q. I think you testified—

A. I can give you the number of tens of newsprint if that would help.

Q. I would like if you can remember it to describe it in terms of fours.

A. I think we are presently using ten thousand tons of newsprint at Lufkin.

Q. What does that mean in terms of papers?

A. In terms of papers, a four-page section weighs fifty pounds a thousand, so if you want me to figure it out—

Q. I take it you are saying that you cannot establish for Lufkin the number of fours per week printed from your experience and your knowledge of this industry, is that correct?

A. I could by a matter of simple division, if you want me to take the time to do it, I will compute it for you.

518 Q. Can you approximate it out of your head?

A. No, I can't.

Q. Is it under five million?

A. No. Just a minute, I will figure it out for you.

The COURT: Do that during the noon recess. Maybe Mr. Koessler will probably know it, he will probably know the exact figure.

Mr. CARLSON: I wasn't so much interested in the exact figure, Your Honor, but this witness has testified as to certain aspects on profits. In order to do that, it is our position that he needs to know—

The COURT: We will pick that up this afternoon as a matter of fact.

519 By Mr. CARLSON:

Q. Do you know what the total production at the present time in terms of fours per week is at Wilkes-Barre, approximately?

A. I think around thirty million, or something like that.

Q. About thirty million?

A. Yes.

Q. If you know, do you know on whom the complaint in this action was served at Greater Buffalo?

A. It was served on me.

Q. It was served on you. Do you remember the date?

A. It was some time in January. I think the date of the complaint was January 6th.

Q. That is correct.

A. I don't know just exactly what date it was served. I made a record of it, though.

Q. You testified a few moments ago that according to your calculations, or your thinking, there is a twenty thousand—and you correct me if I misstate—there is a twenty thousand dollar a month loss at present with respect to Sylacauga's remaining closed, is that correct?

A. That is about what it is costing us, Mr. Carlson.

Q. That is out of pocket cost?

520 A. Yes. What do you mean by "out of pocket"?

A. Well, you are an accountant.

The COURT: You are not figuring loss of profit, are you?

The WITNESS: No, I am just figuring the value of the use of our money is included in that figure.

By Mr. CARLSON:

Q. What else is included in the figure?

A. Depreciation and all the fixed charges of maintenance

and insurance, and heating the place, and all the usual things that go into maintaining a building.

Q. You testified also as to a standard formula that was used?

A. Yes, I did.

Q. In pricing at Greater Buffalo. Is that standard formula going to be used in pricing at Sylacauga in the event that the Sylacauga plant opens?

A. I think so. It hasn't been discussed.

Q. Has not been discussed?

A. We haven't decided what these—we will use the same formula, but what prices will prevail in Sylacauga, I don't know. It depends what work goes in there, whether it is some of Hearst's work, or our own work, or what goes in there.

Q. But it has been discussed then, is that what you are saying, but it can't be calculated until you know what will go in? Is that what you are saying?

A. We will have to know more than what we know now.

Q. You broke down for the Court certain of the costs that go into the standard formula, so-called, that you described?

A. Yes.

Q. You did not identify, at least if you did I missed it, any item as profit in that standard cost?

A. That is built into the figures, Mr. Carlson.

Q. Put into which figures?

A. In all the labor figures.

Q. Did you describe that as press time, or labor cost? How did you describe it?

A. There is labor cost in the make ready, there is labor cost in the press time, and there is labor cost in the wrapping and shipping. Now, the overhead and profit is built into those costs.

Q. You testified concerning transportation matters that would be concerned in a commencement of printing at Sylacauga. In connection with that, is it your plan, or your decision, that transportation savings will be passed on to the customers in the event the Sylacauga plant opens?

A. That is the way it is now, and that is the way it will be.

Q. The plant is not open now, is it?

A. That is the way it will be if the plant is opened. Any transportation savings will accrue to the newspapers.

Q. Now, regarding the Defendant's Exhibit 12, do you have that before you, Mr. Hammond?

A. This is 13.

Q. Defendant's Exhibit 12?

A. No, I haven't.

Mr. MOORE: I have a copy.

Mr. CARLSON: Thank you.

By Mr. CARLSON:

Q. You have identified the breakdowns involved on here and I think they have been identified for the Court. International Color Printing Company is the first column, is that correct?

A. I.C.P. is International Color Printing, G.B.P. is Greater —

Q. I didn't want you to identify all of them. We will save a little time here. I just wanted to know if Inter-
523 national —

A. The first one is International.

Q. Is that the same International Color Printing Company that was acquired by Greater Buffalo Press in about June, 1955?

A. That's right.

Q. One has been identified. The third column is Buffalo Color Press?

A. That's right.

Q. Is that the same Buffalo Color Press, or has that company been acquired by any other company reflected on this chart?

A. The Buffalo Color Press in 1955 was owned by the Scripps Howard newspaper chain.

Q. Has it been acquired by any of the other companies reflected on this chart?

A. The company hasn't been acquired, but the runs —

Q. Has the assets?

A. — The runs that were represented here at that time are now being printed by the Greater Buffalo Press. The Buffalo Color Press discontinued operations.

Q. I note that you testified—excuse me, we are referring to Defendant's Exhibit 13, now, the following exhibit, and I think you have one before you. I note that you have testified
524 that there was a two million dollar Canadian figure in column four—no, column three.

A. Column one.

Q. And in the Carlson affidavit that you have removed for this purpose?

A. It was in column one I removed that. In Column three you will see that there is a difference of one million nine hundred thousand dollars.

Q. Yes. You testified there was a difference. How much would that difference make in regard to the percentages that you use, do you know that, sir?

A. Well, now, I don't know what you are driving at.

Q. How much would that alter the percentage that you have regarding Greater Buffalo Press? You testified you took it out.

A. I don't know. There in Column three there is other factors that enter into these percentages. In Column one, for instance, Mr. Carlson, you don't include—

Q. I am asking a specific question, Mr. Hammond, not an argument on the chart as a whole. I am asking do you know what the percentage would have been as reflected in your columnization here, which is Column five, if you had not removed the Canadian one million nine hundred thousand dollars?

525 A. Oh, in Column five?

Q. Yes. What difference would it have made in percent?

A. Oh, maybe two percent, one and one-half percent, two percent.

Q. Thank you. That is all I was interested in.

Mr. CARLSON: Excuse me just a moment, your Honor. I am trying to locate something.

By Mr. CARLSON:

Q. I believe you submitted an affidavit in this cause that is presently a part of the record in this court, is that correct, Mr. Hammond?

A. Yes.

Q. I hand you a copy of this affidavit as furnished to the Government, and ask you to read on page three of the affidavit a sentence appearing in the second paragraph. Would you read it out loud, please?

A. "Greater Buffalo Press does not employ salesmen to solicit the printing of color comic supplements."

Q. Is that a correct statement, Mr. Hammond?

A. Yes, it is.

Q. You also testified under sworn deposition, 502
 526 United States Court House, April 18, 1961?

A. That's right.

Q. Do you remember making a statement in that deposition and I refer to—

The COURT: I will give you a chance to reorganize this cross examination. We will recess until two o'clock.

(Whereupon at 12:25 p.m. a recess was taken until
 527 2:00 p.m.)

(Proceedings resumed pursuant to recess commencing at 2:00 p.m.)

The COURT: All right, Mr. Carlson.

WILLIAM J. HAMMOND, having been previously duly sworn resumed and further testified as follows:

CROSS EXAMINATION

By Mr. CARLSON Continued:

Q. Mr. Hammond, before we recessed you read out loud to the Court a statement in your affidavit, which is part of the record in this proceedings, that states Greater Buffalo does not employ salesmen to solicit the printing of color comic supplements. I think you stated that was a true statement?

A. That is right.

Q. In your deposition, which is also a part of the record in this matter, you stated at page two three six, "I talked to our salesmen, I talked to Leonard Hirscheiser, one of our salesmen." Is there a difference between your characterization of Leonard Hirscheiser as one of your salesmen and what you are talking about in your affidavit?

A. That is right.

528 The COURT: What is the difference between these men?

The WITNESS: In the affidavit it is referring to salesmen calling on newspapers in the sale of color comic supplements. Mr. Hirscheiser is a salesman who handles commercial sales. It was a different branch of our business.

By Mr. CARLSON:

Q. He doesn't—

A. He doesn't handle newspaper accounts.

Q. (continuing) Handle color comic supplements sales at all?

A. No, he doesn't.

Q. Your statement was "one of our salesmen", who are the others?

A. Well, we have Mr. Robert Lalor, who represents us in New York City.

Q. Is he a salesman of color comic supplements?

A. No, he handles commercial sales.

Q. Only?

A. Only.

Q. No color comic supplements?

529 A. That is right.

Q. Who did you regard as your competitors in this business, referring now to the year 1954, who did you regard in 1954 as your competitors in the color comic supplement printing industry?

A. In the sale of them, Mr. Carlson, or in the production of them?

Q. Let's take them separately; who are your competitors in the production?

A. In production?

Q. Yes.

A. Well, all the plants that were in existence. Eastern Color, Star Color, Southern Color Print, World Color, Acme. I think that about covers it.

Q. Any others?

A. No, not that I can think of.

Q. Did International Color print any color comic supplements in 1954?

A. In the production?

Q. In the production?

A. Yes, that is right, International Color.

Q. Who were your competitors in 1954 in the sale of color comic supplements?

A. Mainly King Features Syndicate.

Q. Any others?

530 A. N.E.A.

Q. Do you know whether any of the other competitors in the production, that you have named, have salesmen?

A. I am not aware of it.

Q. Pardon me?

A. I am not aware of it.

Q. Do you know whether Eastern has any salesmen?

A. I am not aware of that.

Q. Do you know Ham Moore of Eastern?

A. No, I don't.

Q. Do you know whether Acme has any salesmen?

A. I am not familiar with it, I am not familiar with their operation.

Q. Do you know Mr. Richter of Acme?

A. No, I don't.

Q. Do you know whether Southern Color Print has any salesmen?

A. No, I don't.

Q. You do not?

A. I know through this proceeding what the relationship is now.

Q. Have you made any statements as a part of the record in this proceeding as to whether or not Southern Color Print does have salesmen?

A. I understand they have an arrangement with At-531 Atlantic Features. Atlantic Features is represented by Hornaday.

Q. Now, there was one matter I would like to clear up, maybe we can clear it up with you, Mr. Hammond. As far as the question of manning is concerned—do you understand the term "manning"?

A. I understand what it is.

Q. Does it relate to a particular kind of labor within a color printing plant or does it relate to the entire labor force in that plant, as the term is used in the industry, from your experience?

A. Generally speaking, it is in regard to operating the presses.

Q. Pressmen?

A. Printing presses.

Q. Pressmen and other persons who work on presses?

A. That is right.

Q. If I were to ask you a question regarding manning, you would know that that referred to pressmen and people who work on presses?

A. I know what the reference is, yes.

Q. Are you familiar with the prospective labor costs at the Sylacauga Plant in the various classifications of persons, plant personnel who work there?

A. Who will work there?

532 Q. Well, who are scheduled to work there. You told the Court, I believe, you are all ready to go?

A. Yes.

Q. That is, these people are lined up. Do you know what the wage scales are as far as those persons?

A. What the wage scale will be?

Q. Yes, are you familiar with the wage scales of the various classes of persons who will work in the plant?

A. I don't know what the wage scale will be at this moment.

Q. Do you know generally what it is?

A. Probably about on a par with what is paid elsewhere in the country.

Q. Comparing it with wage scales at Dunkirk, do you have knowledge of whether it will be lower, higher, or about the same?

A. Somewhere in that area, I wouldn't know. Those are usually negotiated.

Q. Did you have an answer to the question "about the same"?

A. I imagine that they will ultimately wind up about the same as we pay in other places.

533 Q. A little earlier I think you testified that you had a two million dollar investment in Lufkin, is that correct?

A. Approximately.

Q. And I think you testified that there were approximately seven million per week in there, is that correct?

A. I didn't testify to that, but since we have discussed it, I figured it out to be about eight million a week.

Q. About eight million a week?

A. Yes.

Q. And you also testified as to the investment in Sylacauga as being in the neighborhood of nine hundred thousand dollars, am I correct on that score, nine hundred sixty-five, or sixty-eight, is that about correct?

A. Excluding the land.

Q. Excluding the land?

A. Excluding of the land, yes.

Q. Does Greater Buffalo or Dixie pay for that land?

A. No.

Q. Now, based on your own knowledge, does the plant at Lufkin make a profit?

A. Yes, it does.

534 Q. Would you explain to the Court the reason that with an investment of two million dollars, printing seven hundred thousand, or seven million fours, in Lufkin, comparing that—

Mr. MOORE: I don't want to interrupt, but he testified eight million.

Mr. CARLSON: Excuse me.

By Mr. CARLSON:

Q. On the basis of the eight million runs that you testified as production at Lufkin and the two million dollar investment, comparing that with the nine hundred sixty-five thousand dollar or so investment at Sylacauga, would you tell the Court why, or why not the plant at Sylacauga cannot make a profit on three million four hundred thousand fours?

A. That is a pretty hard question to answer, Mr. Carlson.

Q. Well, I think you stated that they could not.

A. I don't think the question of profit is that relative to investment, necessarily.

Q. Are you stating that you cannot make that comparison, that I have not given you the right basis on which to make such a comparison?

535 A. I couldn't do it without some consideration and thinking about it and doing some calculating.

Q. If ten percent of the printing is moved out of Wilkes-Barre, can you advise the Court, tell the Court what percentage of the labor employed at Wilkes-Barre will be laid off as a result of that?

A. I couldn't answer that.

Q. Based on your experience in the industry, can you give the Court some idea as to what the effect will be?

A. No, because it might develop that other work might be put in there and we might develop other work. I wouldn't know whether it is necessary to lay off anybody.

Q. Well, I was posing the question purely on the basis of ten percent of the work out of Wilkes-Barre, and ask you, if from your experience in industry, you could give the Court some idea of the impact, the effect that would have, based on your experience, in regard to personnel employed at Wilkes-Barre under those conditions?

A. I couldn't tell you what that impact might be.

Q. You do not know?

A. I don't know.

536 Mr. CARLSON. I have no further questions, your Honor.

REDIRECT EXAMINATION

By Mr. MOORE:

Q. Well, now, without regard to the operation at Lufkin, are you still of the opinion that the Sylacauga plant cannot be operated profitably on four million fours?

A. When you say four million fours, Mr. Moore, I think we are talking about three million four hundred thousand fours.

Q. Well, I am asking you four million fours?

A. Four million fours, I would say not.

Q. And in this business there is no exact ratio is there, which would state that a two million dollar plant needed eight million fours, and therefore, a one million dollar plant only needed four million fours?

A. No.

Q. Now, counsel asked you about the plans for pricing in Sylacauga. Do you know whether or not it is intended in Sylacauga to generally price according to the same formula that Greater Buffalo has used over the years?

537 A. Yes, I think that is a logical conclusion that we will use the same formula.

Q. And essentially it will be the same price for the same product?

A. Essentially the same price for the same product.

Q. And the great advantage of Sylacauga printing lies in the transportation savings that will be effected to the newspapers in the southeast, does it not?

A. That is the whole purpose of the plant.

Q. Now, they talk about the purchase of the stock of International. What did you say the purchase price was on that?

A. Five hundred seventy-five thousand dollars.

Q. And that purchase price was negotiated on the basis of the book value or the net worth of the company at that time, was it not?

A. At that time.

Q. That was what the—

A. What the net worth showed on their balance sheet.

Q. The net worth shown on their books. International doesn't own its main plant, does it?

A. International owns no property.

Q. Well, don't they own a smaller plant?

A. Oh, yes. They own a little plant called the Parsons plant. It is very small.

Q. But the main property, mill, is on rented—
538 A. That is on rented quarters.

Q. And at the time of the acquisition of the stock, was the machinery at International pretty well depreciated?

A. It was pretty well depreciated, yes.
539 Q. And since the acquisition of the stock of International by Greater Buffalo, how much money approximately has been invested in the fixed assets of International?

A. Well, this would be a guess, but I would say over a half a million dollars.

Mr. MOORE: That is all.

RECROSS EXAMINATION

By Mr. CARLSON:

Q. Just one question, Your Honor. Did you have familiarity with the transaction by which International was bought?

A. Did I have familiarity with it?

Q. Yes, were you involved in the transaction?

A. Yes, I was.

Q. From your knowledge of the books, could you tell the Court how much in the way of machinery and assets International acquired during the years 1948 to 1954 preceding the acquisition?

A. The acquisition of machinery from 1948 to 1954?

Q. Yes. In effect, what I am asking is how they added to their assets during that period of time, if you know.

A. I don't know.

Q. You do not know?

540 A. No, I don't.

The COURT. Is that all?

Mr. CARLSON: That is all.

The COURT: That is all.

(Witness excused.)

Mr. MOORE: That concludes our proof, Your Honor.

The COURT: Any rebuttal?

Mr. MOORE: Well, I have one exhibit which was not entered. The gentleman was examined and I have this—

Mr. CARLSON: This is not in and you propose to offer it at this time?

Mr. MOORE: Yes.

Mr. CARLSON: If the Court please, I think there was objection made on this at the time and the Court ruled on it and I think the matter has gone in evidence, I am not sure, but if it has not—

Mr. MOORE: Is this the objection involved with—

Mr. CARLSON: This is the objection as to the materiality of it.

The COURT: I haven't asked you gentlemen from time 541 to time if you wished to cross examine. I assume if you had wanted to, you would have mentioned it.

Mr. CLIMENKO: That is correct.

Mr. HAYNES: That is correct.

The CLERK: Exhibit D-4 marked in evidence.

(Thereupon Exhibit D-4 for identification was received and marked Exhibit D-4 in evidence.)

The COURT: All right, swear your witness, Mr. Carlson.

ROBERT D. SMITH, called as a witness by the plaintiff and being first duly sworn, testified as follows:

The CRIER:

Q. Your name?

A. Robert D. Smith.

DIRECT EXAMINATION

By Mr. CARLSON:

Q. Mr. Smith, would you state your name and address for the record, please?

A. My name is Robert D. Smith. I live in Newport 542 News, Virginia. I am general manager of the Daily Press

Incorporated which owns the Southern Color Print Corporation of which I am general manager and assistant treasurer.

Q. Will you describe to the Court just in general terms what business the Southern Color Print Corporation is in?

A. The Southern Color Print Corporation is in the business of producing color comic sections for newspapers.

Q. How long have you been connected with that business?

A. I have been connected with the Southern Color Printing since 1950.

Q. How long have you been in the newspaper business?

A. Since graduation from the University in 1923.

Q. Is that continuously all that time?

A. Yes.

Q. In the course of your experience in the newspaper industry and the printing industry, have you come to have knowledge of cost factors that go into the printing of color comic supplements?

A. I have done a lot of estimating on the cost of producing color comic sections and in my early association with the Southern Colorprinting, my job was to figure out costs of each individual run to determine some factors that could be used in bidding for new work and I made sort of a study of it. I took accounting and went to business schools and so on in my youth, so I know something about accounting procedures.

543 Q. In the course of your experience in the printing industry, have you become acquainted with wages in the color printing industry, wage scales, in the country generally?

A. I have had to do that in connection with my job since one of my principal assignments is to negotiate with labor unions in which I am negotiating with nine or ten regularly so I keep posted on labor rates and various crafts in the printing industry. Our newspaper is a member of the clearing house of the American Newspaper Publishers Associations which maintains a file of labor rates throughout the whole United States and these files are kept up on a weekly basis with my office with the changes made in some central clearing house so it is possible for me to tell not only what the hourly rates are but all the fringe benefits, vacations, sick leave and so on because I need that information in our negotiations.

Q. Over the past ten years have you regularly referred to such records and studied them and kept up on them?

544 A. There isn't a day goes by when I don't study some angle.

Q. In the course of your duties have you become acquainted with the cost of newsprint in your area and in other areas of the country?

A. Well, in our area we have one standard price; it is a zone price. I am not familiar with what it is in all parts of the United States because the zones vary. We are in a zone where the price is \$134.00 a ton.

Q. What area does that zone cover?

A. It is in the New York zone. We have the same prices up and down the coast. We receive our newsprint by boat from Canada.

Q. Does it cover all of the coast, the east coast?

A. I think it goes down to as far as Charleston and I don't know what it is from there on down.

Q. Charleston, South Carolina?

A. Yes.

Q. In the course of your duties have you become acquainted with the manning of the presses in the color printing operation?

A. In the negotiations with the Pressman's Union, 545 manning is one of the major points of discussion. You do not operate a union shop without having a manning formula that is approved by both the union and the company after negotiations. This manning will vary from plant to plant in accordance with the condition of the machinery and the policy in effect and so on.

Q. You do know what the term "manning" is?

A. I do.

Q. You do know generally what manning conditions are?

A. Yes.

Q. What is the present production in terms of fours per week at the Southern Color Printing Plant?

A. The Southern Color Printing plant operates five shifts, one day and one night, of five each, making a total of ten shifts and the production in fours is made in 600,000 units.

Q. Does Southern Color Printing make a profit on that production?

Mr. MOORE: I am going to object to that, Your Honor. I think that he is starting to compare apples and bananas here. We have two different plants here and we don't know what the investment is.

The COURT: Well, the witness has just said that manning 546 is one of the major factors and it depends on the condition of the machinery and I will receive it with that in mind.

By Mr. CARLSON:

Q. Well now, from your knowledge and experience that you have testified to concerning wage rates generally in this field, would wage rates in Alabama be higher, lower or about the same as they are in Newport News, Virginia at Southern Color Printing?

Mr. MOORE: I am going to object to that.

The COURT: Ask him if he knows.

Mr. CARLSON: Do you know, sir?

The COURT: Ask him if he knows as to the comparable scale of labor, whether he knows the rates prevailing, not only in Alabama but in Sylacauga and his station.

By Mr. CARLSON:

A. Do you know, sir?

A. I know about the rates at Birmingham, Alabama, where they have union contracts and they have wage rates 547 on file. I do not know about Sylacauga or that area because as far as I know there is no union contract on file there. There is a lower rate that prevails in Virginia—

Mr. MOORE: I object to that, Your Honor. That is wholly speculative. He is talking about what we might possibly be faced with when we sit down to the bargaining table in an area where he has never heard what the rate is and, in fact, there is no rate and for him to speculate—

Mr. CARLSON: May I say a word on this?

Mr. MOORE: And for him to speculate on what it is going to be, I claim that is immaterial.

Mr. CARLSON: May I say a word on this?

The COURT: Yes.

Mr. CARLSON: The defendants have had two witnesses who have speculated about prospective profits. They have also told Your Honor, I believe the witness Clinton, I believe and the witness Hammond, they have also told Your Honor that they are ready to go on two or three days notice. It is inconceivable to me that if they are able to speculate on profits that they can't know some of these things that must affect the cost in the Sylacauga, Alabama area. I just don't see how it doesn't make common sense they they can pose the fact of profits on the operation without some knowledge on these things.

The COURT: There may be a profit or there may not and I don't think you can have it from this witness. Sustained.

The WITNESS: Well—

The COURT: I just sustained the objection.

You don't answer that.

549 The COURT: If he wants to state, tell me how far Birmingham is from this particular town, and if he knows the prevailing union rate there, I will receive it.

Mr. CARLSON: That is the line of questioning I was going to pursue.

The COURT: How far is Birmingham from this town?

Mr. CARLSON: Forty miles, I believe, your Honor.

The WITNESS: Forty or fifty miles. I have driven it.

By Mr. CARLSON:

Q. Is it the largest metropolitan area in the neighborhood of Sylacauga?

A. That is right.

Q. Based on your knowledge of rates in Birmingham to which you have testified, can you state whether the rate for comparable skilled labor in a color plant in Birmingham, on the basis of Birmingham scale, will be higher than, lower than, or about the same as those in Newport News?

A. There is one point I would like to bring out in this discussion; that the color plant labor brings a little more 550 money than the regular newspaper, black and white, pressmen on the black and white.

When you ask me the question about the color plant in Birmingham, what the rate would be, I wouldn't know. They have no color plants. The newspaper, the News-Herald—

Mr. MOORE: I object, based on the last statement, your Honor.

The COURT: Sustained.

Mr. CARLSON: I have no further questions, your Honor.

CROSS EXAMINATION

By Mr. MOORE:

Q. Mr. Smith, of course, your printing plant prints for two daily newspapers, does it not?

A. It is an entirely separate operation, Mr. Moore, separated from the other plants by a distance of three miles.

Q. Is it the same management that runs both plants?

A. No, we have a plant manager who operates the day to day operation of the plant. In other words, there are many, many days when I don't go near the plant. It is under this superintendent's management.

Q. This is the color plant?

551 A. Color plant, that is right.

Q. And you run the newspaper plant?

A. That is right.

Q. Of course, you keep the books of the color plant and the books of the newspaper plant together on your operating costs?

A. No, they are not. They are kept entirely separate under an accounting procedure with separate accountants that keep the books.

Q. Do you have two separate statements, financial statements?

A. That is right, two separate statements, monthly board meetings, and annual meetings and statements, all separate reports filed with the Government, all separate.

Q. Do you file a single income tax return?

A. No, sir, separate.

Q. Do you file a separate income tax return?

A. That is right, it is a separate corporation.

Q. And Southern Color Printing is owned by what corporation?

A. The Daily Press, Incorporated.

Q. And the Daily Press Incorporated owns what newspapers?

552 A. The Daily Press and the Times Herald, one morning, one afternoon.

Q. And those are papers published where?

A. In Newport News, Virginia.

Q. And then the color printing business though, as far as you are concerned, is a sideline to your publishing and newspaper business, isn't it?

A. It is a subsidiary.

Q. It is a sideline, isn't it?

A. Well, we have other sidelines too.

Q. This is one of them?

A. Yes. We have five corporations, this is one of them.

Q. Now, you own the other half, do you not, of this press 2022?

A. The numbers are both the same.

Q. It is the same press, isn't it?

A. I guess they were both operating separately. The 2022 that has been referred to previously was in Wilkes Barre and Sylacauga somewhere, the other press was operating in Baltimore.

Q. Press 2022 was originally one piece of machinery in Baltimore?

A. That is what they tell me.

Q. You bought half and Greater Buffalo bought half, is that right?

53 A. That is right. We were told that International Color had bought the other half, though. I never heard about Greater Buffalo until I came up here.

Q. Now, of course you are operating now at Southern Color at practically your capacity for color comic supplements, are you not?

A. No, not according to what you would call capacity. We don't operate on Saturdays, we could operate a midnight shift, we don't.

Q. You are operating, would you say, at ninety percent of capacity?

A. No, it would be probably three-fourths if you took the extra days in.

Q. You are operating six days a week?

A. Five days.

Q. How many shifts?

A. Two shifts a day, ten shifts a week.

Q. Now, of course you filed an affidavit in this proceedings, did you not, opposing the opening of this plant at Sylacauga?

A. That is right.

Mr. Moon: That is all.

The COURT: Do you supply any newspapers in the south with colored comics?

The WITNESS: We have customers—two in Alabama, 54 one in Mississippi, two in Georgia, two in South Carolina, three in Florida—I have forgotten now, I think it's about six or seven in Carolina, North Carolina, and two in Virginia. Twenty four in all.

The COURT: Do you get your newspaper print in Canada?

The WITNESS: It comes in from Canada.

The COURT: Is that advantageous to you rather than buying southern newsprint?

The WITNESS: Well, we have made test runs with Coosa River paper, Coosa River was financed by newspaper some years ago and we were able, under our stock ownership, to buy five carloads of paper a year. That wasn't sufficient for our needs. We have an exclusive contract with a Canadian mill now. We gave up the Coosa River contract allotment. We are bound by our contract to buy entirely from Canada.

55 The COURT: What newspaper financed Coosa River?

The WITNESS: There was a pool of newspapers. They

bought stock in the firm, set the plant up. The southern newspaper publisher's association led the campaign to finance the plant and erect it. The newspapers bought stock in it. We were one of those who bought. The newspapers all throughout the south bought stock in it. They were given an allotment of newsprint on the basis of their stock ownership.

556 The COURT: Well, if you weren't a member of that, do I gather from what you say that if you are not a member of that association, you can't buy any print?

The WITNESS: No, no. At that time newsprint was scarce and it was on an allotment basis, but Coosa River has shipped us newsprint within the last six months to try out in our comic plant to see how it would produce on comic sections.

The COURT: What do they hold out to you as to the availability of their newsprint now?

The WITNESS: They would like to have us as a customer they say.

The COURT: Do you mean you could get all you want?

The WITNESS: Our contracts with the Canadian mills—

The COURT: I don't mean that. I say could you get, do you understand, all you want from Coosa River now if you 557 didn't have this Canadian contract?

The WITNESS: I think so. Our consumption, Judge, is about two thousand tons a year and I think they would handle that all right. Newsprint now is more plentiful and our contracts on the newspaper and the color part are separate, and there has been some changes as in ownership in the mills now. We are receiving newsprint salesmen who are anxious to sell us newsprint. We are making test runs on three different kinds of other newsprint to see how they print.

The COURT: I think that answers the question.

By Mr. Moore:

Q. Well, the fact is that now newsprint is really no problem. You can get all the newsprint?

A. That's right. That is what I understand because they come around and call on you now.

Q. And the way newsprint is sold, when you are in a 558 zone you pay the zone price, don't you, no matter where it comes from?

A. Well, I was quoted a price. I won't say quoted, but a newsprint mill in Tacoma, Washington one month ago I visited

the mill. They sell at four dollars under the zone price and the mill manager there said that there is a growing tendency to break down this zone price structure.

Q. That was from Tacoma, Washington?

A. That's right. I was out there and I went down to see this mill.

The COURT: In other words, it is getting more competitive.

The WITNESS: That's right, yes.

By Mr. MOORE:

Q. Well, the zone price you have in your zone I think you said was one hundred thirty-four—

A. Dollars a ton.

Q. And in the zone where Sylacauga is, isn't it \$135.00 or something like that?

A. I think it is. A little further away from the New York port of entry, why, the price goes up. I don't know exactly what it is.

Mr. MOORE: That's all.

550 Mr. CARLSON: No other questions.

The COURT: All right. Step down thank you.

Mr. MOORE: I have one question just let me ask.

By Mr. MOORE:

Q. Now, these contracts you have that you print at Southern, the comic supplement contracts, you know, don't you, that some of those used to be printed at Wilkes-Barre, didn't they?

A. Yes, sir.

Q. By International. What were there, a million or so of them? Weren't there a million fours?

A. I would have to sit down and figure them out and see where they came from, the source.

Q. But a substantial amount of the business you have got used to be printed at Wilkes-Barre?

A. Well, before our plant opened we didn't have any. It was printed somewhere.

Q. At Wilkes-Barre, wasn't it?

A. I don't know. Some might have been printed by Buffalo Color Press.

Q. Well, don't you know that the bulk of it came from International, that it had formerly been printed at Intern-
560 national?

A. I would offhand say probably it had been, yes.

Mr. MOORE: That is all.

The COURT: I think that is all.
(Witness excused.)

The COURT: Any of these people who come from far stations, I assume when they are excused you don't want them again.

Mr. CARLSON: Beg pardon, sir?

The COURT: Those people who come from remote points, are we through with them now?

Mr. CARLSON: Yes.

The COURT: I think I should instruct the witnesses here who have come from a distance if they want to leave, they are now free to leave. It is up to them.

Mr. CARLSON: Those that have been excused, that have been on the stand?

The COURT: That's right.

Mr. CARLSON: Yes, sir. Mr. Brader.

561 ROBERT BRADER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. CARLSON:

Q. For the record, would you state your name and address sir?

A. Robert Brader, 47 Kado, Wilkes-Barre, Pennsylvania.

Q. By whom are you employed Mr. Brader?

A. International Color Printing Company.

Q. How long have you been employed by that company?

A. Twenty-two years.

The COURT: Don't subdue your voice, just talk naturally. Go ahead.

By Mr. CARLSON:

Q. What has your position been with the International Color Printing Company?

A. I have been employed in the Mailing Department.

Q. Is that over the entire period of the employment?

A. Yes.

Q. Are you a member of any union?

A. Yes.

Q. What union is that, Mr. Brader?

562 A. Well, presently it is the International Mailers' Union.

Q. You say "presently". Is there some change that has occurred?

A. Well, previous to that in 1957 and back to 1941 I was a member of the Wilkes-Barre Paper Handlers Union, which was affiliated with the International Printing Pressmen and Assistants Union.

Q. Is this in effect the same union but one succeeding to the other?

A. That's right.

Q. What positions have you held in the union?

A. Well, I have been chairman and president, chairman and president of the union for fifteen years.

Q. As chairman of the union do you take part in labor contract negotiating sessions with management?

A. I do.

Q. That is, with management of the International Color Printing Company?

A. With the management of International Color.

Q. Would you state who they are and who they have been over the past fifteen years of your experience, the persons on management?

A. Well, there was Mr. Gorman, Booth, Garvey, Brennan, and Mr. Gallagher who is now deceased, and I think one time Mr. Clinton.

Q. Who was the spokesman during this time on the
563 management side?

A. Mr. Gorman.

Q. Do you regard him as the leading voice of management in these negotiations?

A. I do, yes.

Q. Directing your attention to the period prior to the June 1955 acquisition of International by Greater Buffalo, what subjects were considered at labor union negotiations that you attended in your position as chairman of the labor negotiating committee?

A. Well, when we negotiated contracts it was always fair wages and conditions, and in the period of discussion to negotiate the contracts Mr. Gorman always brought out the problem of our higher manning compared to other plants.

Q. Did he name the other plants in this period of time, this 1948 to 1954 period?

A. Yes.

Q. In the course of negotiations?

A. He named—there was Wilmington, Buffalo, Dunkirk,

Waterbury, Bridgeport and other color printing companies.

Q. About how many of these negotiation sessions did you attend, directing your attention just to 1948 to 1954, if 564 you can give an approximation?

A. Well, I would say at least—the least number would be two a year each contract year and I think during that period we probably had about five contracts. So, I would say in the neighborhood of at least fifteen meetings. I would say the minimum would be about fifteen meetings during that period.

Q. You have described to the Court what companies were mentioned in connection with Mr. Gorman's statement?

A. Yes.

Q. Statements concerning competition, competitors in the industry? You have identified them by name. Did Mr. Gorman in the course of these fifteen or so meetings characterize any of these particularly?

A. Yes, specifically I would say Dunkirk.

Q. What do you mean by "Dunkirk"?

A. Well, that is Buffalo, Greater Buffalo.

Q. Greater Buffalo Press?

A. That is the Dunkirk plant where they didn't employ mailers on the night shift. The pressmen would pile their bundles after the press was registered, then they would fly their bundles and on the two night shifts—well, I assume that they did it on the three shifts, but the mailers would only come in on the day shift and wrap them all up which is very 565 different than we have in Wilkes-Barre.

Q. How did Mr. Gorman refer to Greater Buffalo at these meetings?

A. Well, it was always the competitive problem there and he always knew that we had the higher manning, but it was a problem. He always said it was a mistake of birth.

Q. Did he use any specific term to describe the company Greater Buffalo?

A. Well, I know on several occasions he said "Maybe you would like to work for Buffalo" or something like that.

The COURT: I didn't get that last phrase. He always described it as what?

(Whereupon a question and answer were read by the reporter as follows: "Q. How did Mr. Gorman refer to Greater Buffalo at these meetings? A. Well, it was always the com-

petitive problem there and he always knew that we had the higher manning, but it was a problem. He always said
586 it was a mistake of birth.")

The WITNESS: What I am trying to say is the company is concerned with—what he was trying to say is that the company was a mistake of birth being located in Wilkes-Barre. That was one of his favorite expressions.

The COURT: "Mistake of birth", what do you mean? I know one word to describe a mistake of birth. Is that what you had in mind? What do you mean by the phrase "A mistake in birth"?

The WITNESS: That the company where it originated, where Wilkes-Barre became the International Color Printing Company. He said that its origin, that perhaps it would have been better if it was located some place else.

The Court: All right.

587 By Mr. CARLSON:

Q. Did Mr. Gorman describe Greater Buffalo as his chief competitor in the course of these discussions?

A. Yes.

Q. Can you identify to the Court any specific occasions on which he so indicated in the period 1948 to 1954? Take the first occasion that comes to your mind.

A. Well, I remember the first time that I was elected chairman of the union, that was back in 1947. I think 1948 was my first negotiating committee. It seems to stick in my mind because that was the first time that I was on the negotiating committee and I recall then that from that period, that during that period of negotiations that he mentioned those specific companies and particularly Buffalo, Greater Buffalo. Then again in 1950 we negotiated a contract and again it was the problem of competition. In fact, I have a letter to the effect, although no names were mentioned in the letter. I know that he mentioned particular companies during negotiations that were his competitors.

588 Q. Did you discuss in the negotiations who the competitors were?

A. Yes.

Q. One of these competitors was Greater Buffalo Press?

A. Yes.

Q. Moving a little closer down to date, in the negotiating sessions that just preceded the event of Greater Buffalo's ac-

quisition of International, did any such discussion occur with Mr. Gorman?

A. Yes. I think it was our last contract before Buffalo had bought International Color in 1954.

Q. What did Mr. Gorman say at that meeting, or at those meetings?

A. I don't know. Again, like I say, specifically, Buffalo was our competitor.

Q. By "Buffalo", you mean Greater Buffalo?

A. Greater Buffalo.

Q. You knew what he referred to when he said "Buffalo"?

A. Yes, Dunkirk.

Mr. CARLSON: That is all.

CROSS EXAMINATION

By Mr. MOORE:

Q. Mr. Gorman still refers to Greater Buffalo in the negotiations as the competitor, doesn't he?

A. No.

569 Q. You mean to say you have never heard that reference since 1955?

A. I know that since 1955 when I negotiated contracts that every contract since then, when we negotiated contracts he said that he wasn't the boss any more, that he had to go back to the boss.

Q. But didn't he always in the negotiations, didn't he right down to date argue that Greater Buffalo didn't have this high manning expense?

A. He still referred to manning.

Q. And he points out that Greater Buffalo was having less expense manning than he is?

A. That is true, yes.

Q. And he points out that his prices have to be competitive with Greater Buffalo and therefore you fellows should go along with him on manning?

A. Well, yes, he talks about manning. They always talk about manning.

Mr. MOORE: I think that is all.

The COURT: Let me ask you, what is it that you have in Wilkes Barre—is that where you are stationed?

The WITNESS: Yes.

The COURT: In the way of manning, what is it that you have in Wilkes Barre in the way of manning that Buffalo 570 and Dunkirk doesn't have?

The WITNESS: Well, see, where we have our contracts, you take the bundles after you tie the bundle, we have a man at each press, and he takes it or stacks it, whichever the case may be, where at Buffalo they don't do it. The pressmen's union, they flick them or stack them on a tray or skid and take them into a mail room and then during the day the mailers come in and wrap these bundles up.

The COURT: What is that, mailers?

The WITNESS: Mailers, or wrappers. I think Mr. Henry used the term bundling.

The COURT: In other words, in Buffalo and Dunkirk the pressmen take the bundles —

The WITNESS: I don't know about the bundles.

The COURT: Well, they take the finished product out to the mail room?

The WITNESS: Yes.

The COURT: Whereas in Wilkes Barre there is a special man that does that?

The WITNESS: That's right.

REDIRECT EXAMINATION

By Mr. CARLSON:

Q. Just one question. During your cross examination you indicated that following the 1954 acquisition that Mr. Gorman stated he had to go back to the boss?

A. Yes.

Q. What did Mr. Gorman mean by that, if you know?

Mr. MOORE: Wait a minute. I object to what he meant by that.

Q. Did Mr. Gorman state to you —

The COURT: Well, certainly it would be an objectionable question what he meant by that, unless he told you what he meant.

By Mr. CARLSON:

Q. Did Mr. Gorman state to you who he referred to?

A. We knew that Buffalo had bought —

Mr. MOORE: I am going to object to that and move to strike it out.

The COURT: Leave it just the way it is. He said he was no longer the boss. Is there anything else?

572 Mr. CARLSON: Nothing further.

The COURT: Well, I mean, we all know and acknowledge that Greater Buffalo has acquired the stock of International. All right, next witness.

Mr. CARLSON: I will call Mr. Fisher.

DANIEL FISHER, called as a witness by the plaintiff, and being first duly sworn, testified as follows:

By the CRIER:

Q. What is your name?

A. Daniel Fisher.

DIRECT EXAMINATION

By Mr. CARLSON:

Q. Please state your name and address for the record, Mr. Fisher?

A. Daniel Fisher, 175 Mill Street, Parsons.

Q. Parsons?

A. Wilkes-Barre.

Q. By whom are you employed?

573 A. International Color Printing Company in Wilkes-Barre.

Q. And how long have you been employed by them?

A. For ten years, approximately.

Q. What is the nature of your employment; what are your duties as far as your job is concerned?

A. A machinist.

Q. You are a machinist?

A. Yes.

Q. Are you in a particular category of machinist?

A. Maintenance machinist.

Q. Maintenance machinist?

A. Yes.

Q. In the course of your duties as a maintenance machinist for International, do you work on machinery in the printing part of the plant?

A. I do.

Q. Have you ever in your experience worked on a press called press number 2022?

A. I have.

Q. Would you describe to the Court the physical condition, by that I mean the place at which press 2022 was located, and the way it was put up in the Wilkes-Barre plant?

574 A. Well, it was located in the building next to the machine shop which was a brick building with a concrete floor and the press was erected, was on pipes, about six inch pipes for uprights.

Q. Is that where work was done on it by you as a machinist?

A. Yea.

Q. Did you and the machinists work on this over a period of years in the course of your duties?

A. I did.

Q. Did it occupy a substantial portion of your work time, working on press 2022 and I mean by that, from time to time, or regularly you would be working on that press?

A. Oh, from time to time I would work on it.

Q. Did you, in working on it, gain a general familiarity with the press?

A. I did.

Q. I am going to refer to an item on the record on page 13 of an affidavit submitted in this matter by Mr. Gorman and to save a little time here I will read the statement that appears on that page, "When the work on the press, referring to press 2022, was substantially completed at Wilkes-Barre, a collapse of the floor of the warehouse resulted in throwing the press out of line and that necessitated redoing a substantial amount of work on the press, and this work was carried 575 out after it had been shipped to Sylacauga in early 1960". Referring generally to that statement I have just read, do you have any knowledge of such an incident?

A. Well, I do recall that there was a crack appeared in the floor, in the concrete floor, at which time we inserted an H-beam, and a couple of house jacks, which we borrowed. When I say "we", I mean the gang. I myself didn't do that certain job, but I don't think it resulted in any major breakdown in the press.

Q. Did you observe the sag? Is that how you describe it, the sag?

A. Yes.

576 Q. How much sagging was there?

A. In my estimate it wasn't much.

Q. Did you, after this incident, further work on 2022 as a machinist?

A. Yes.

Q. Did you have an opportunity to observe the condition of the press?

A. I did.

Q. Did you observe, in working on press 2022, any damage to the machinery that could be attributed to this incident?

A. No.

Q. In the course of your duties as machinist at Wilkes-Barre, do you have opportunity to observe what machine tools and what machinery come in and go out of the plant?

A. I do.

Q. Was any machinery returned to Wilkes-Barre recently?

Mr. MOORE: If Your Honor please, I object to that. How can this witness testify, was he there twenty-four hours a day, is he going to say nothing came in the plant without him seeing it?

The COURT: I will let him testify as to what he did see.

577 Mr. MOORE: If he wants to testify under oath that nothing came into the plant—

The COURT: I am going to let him testify to what he did see.

By Mr. CARLSON:

Q. Did you observe within the last two weeks any machinery coming into the Wilkes-Barre plant?

A. There was a shipment of machine shop equipment that came back from Sylacauga.

Q. What was the date, sir?

A. Well, it was around the seventeenth or eighteenth of the month.

Q. What month?

A. October.

Q. Of 1961?

A. Yes.

Q. Less than two weeks ago, is that correct?

A. That is correct.

Mr. CARLSON: No further questions.

The COURT: There has been testimony that they shipped some tools down there to do their work, set up the installation.

Is that the type of tools you are talking about?

578 The WITNESS: The very same come back.

The COURT: They were taken down there for the purpose of getting the Sylacauga plant in shape to operate?

The WITNESS: I presume that is it.

The COURT: Any questions, Mr. Moore?

CROSS EXAMINATION

By Mr. MOORE:

Q. You said there was a little sag in the floor underneath this press?

A. Yes.

Q. And necessitated putting in an eye beam and jack?

A. Yes.

Q. What was the tolerance of this press?

A. The tolerance of the press in the warehouse when it was being erected?

Q. What is the tolerance of press 2022 when it's ready for operation?

A. I would say they wanted it perfect.

Q. Three one-thousandths of an inch, isn't it?

A. Yes.

Q. If you are going to run a press at a rate of 25,000 an hour you have got to have perfect alignment on it, don't you?

A. It wasn't to run in the warehouse.

579 Q. Well, isn't it a fact that press 2022 was never aligned at Wilkes-Barre?

A. That is a fact.

Mr. MOORE: That is all.

The COURT: That is all, you may step down.

(Witness excused.)

Mr. CARLSON: Mr. Williams, take the stand, please.

WILLIAM J. WILLIAMS, called as a witness in behalf of the plaintiff, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. CARLSON:

Q. State your name and address?

A. William J. Williams, 226 Mill Street, Wilkes-Barre.

Q. By whom are you employed?

A. International Color Printing Company.

Q. I think you should raise your voice.

A. International Color Printing Company.

Q. Maybe if you moved a little closer to the microphone it would be helpful. How long have you been employed by International Color Printing Company?

A. Eight years and eight months.

580 Q. Since about—

A. February, 1953.

Q. What is the nature of your duties with International?
A. Machinist.

Q. In the course of your duties as a machinist at International have you become acquainted with press 2022?

A. Yes, sir.

Q. Did you work on it while it was in Wilkes-Barre?

A. Yes.

Q. Referring to the Gorman affidavit, I will shorten this up, were you acquainted with any incident with regard to the floor of the plant? In which press 2022 was set up?

A. Yes.

Q. At Wilkes-Barre?

A. Yes.

Q. Did you, after this incident occurred, work on the machine?

A. Yes.

Q. At Wilkes-Barre?

A. Yes.

Q. Did you observe any damage to that machine?

A. No.

Q. Attributable to the incident regarding this sagging
581 of the floor?

A. No.

Q. Did you work on that machine after it went to Sylacauga?

A. Yes.

Q. Could you give the Court an idea as to whether the major part of your time working at Sylacauga was spent working on press 2022?

A. Yes.

Q. More than half?

A. Yes.

Q. How long were you in Sylacauga?

A. One day shy of a year.

Q. From what date initially?

A. From the 25th of May, 1960 to the 24th of May, 1961.

Q. From your familiarity, working on press 2022 during this time, did you observe any damage to the press that could be attributable to the incident of the floor at Wilkes-Barre?

A. No.

Mr. CARLSON: I have no further questions.

CROSS EXAMINATION

By Mr. MOORE:

Q. You volunteered to go to Sylacauga, didn't you?

582 A. Yes, sir.

Q. And you went there because it was a pretty good deal?

A. Yes.

Q. You got \$14.00 a day living expenses?

A. Twelve.

Q. You got an erector's rate?

A. Yes.

Q. That was \$3.50 an hour, a better rate than you usually get?

A. Yes.

Q. You had a sixth day at time and a half?

A. Yes, sir.

Q. And the \$12.00 a day living expenses. Now, you knew, did you not that Greater Buffalo was reimbursing International Color for the salaries and expenses you had down there?

A. I didn't know, no.

Q. Didn't Joe Clinton tell you that?

A. Not that I know of, that I recall.

Q. Didn't they tell you that when he asked you if you wanted to go down?

A. They told us the rate of pay, what we would get, that was it.

Q. Did you ever hear that anywhere?

583 A. Not that I remember.

Q. You never heard anybody speaking about it?

A. No, sir.

Q. Now, the press had to be aligned in Sylacauga, didn't it?

A. Yes.

Q. And wasn't the alignment knocked out when the floor collapsed up at Wilkes-Barre?

A. It was never aligned at Wilkes-Barre as it was in Sylacauga?

Q. The drives were out of alignment when the press got down to Sylacauga?

A. Everything was out, we had to align it all from scratch.

Q. Part of the realignment was required because of this collapse of the floor, wasn't it?

A. I can't truthfully say that.

Q. Do you know whether it was or it wasn't?

A. I don't know.

Q. You don't know whether the collapse of the floor had anything to do with the alignment of the press?

A. Will you repeat that?

Mr. MOORE: Will you read it to him?

(Thereupon last question was read by reporter.)

584 A. No.

Mr. MOORE: That is all.

Mr. CARLSON: I would like to clear one matter up. The witness maybe was not referring to the same thing that Mr. Moore was.

By Mr. CARLSON:

Q. How did the parts of this press, or how did the press come to be in Sylacauga, in what physical form did it come there?

A. It was taken apart and shipped on skids.

Q. So that it didn't come down as a whole machine?

A. No.

Q. Did that mean that you, as a machinist, would understand that it had to be realigned after it got there?

A. Definitely.

Mr. CARLSON: I have no further questions.

Mr. MOORE: No questions.

(Witness excused.)

Mr. CARLSON: Your Honor, I think the Government
585 will not put on anymore witnesses at this time. I did indicate to counsel when I called him to advise him who would be on as far as the Government was concerned, that I have been in contact with Mr. Harold Tyler, counsel for Atlantic Features and for Southern Color Print, and that he had requested of me that on this matter he be permitted to make a statement to the Court. The Department has considered its position on this and as long as the statement to the Court is limited to the issues on the motion and the motion itself, the Department would have no objection to Your Honor hearing it, it would, in fact, recommend you do hear it in the same manner that you took in consideration under the motion the representation of the people of Sylacauga and of certain others.

The COURT: Who is this individual that you are speaking of?

Mr. CARLSON: Mr. Harold Tyler.

586 The COURT: What organization?

Mr. CARLSON: He is counsel for Southern Color Print

and counsel for Atlantic Features, both of whom have been the subject of a considerable amount of testimony. Your Honor will recall that Mr. Smith, who was on the stand, is head man at Southern Color Print.

The COURT: Does he want to testify?

Mr. CARLSON: No, he wants to make a statement to the Court.

The COURT: Is he the counsel for them?

Mr. CARLSON: Yes. You will recall as this developed, the motion developed, there were statements by the Government with regard to irreparable injury to persons in the southeast. There was evidence in affidavit form, and so forth, admitted on that point.

The COURT: An affidavit from this corporation that he wants to speak about?

Mr. CARLSON: From Mr. Smith, who was head of Southern, from Mr. Hornaday, head of Atlantic Features.

The COURT: This is the counsel for them?

587 Mr. CARLSON: Yes.

Mr. MOORE: I have great respect and friendship for Brother Tyler, but after all it seems to me we have enough problems in this litigation with the parties that are already in it that we should not be entertaining the views of strangers to the litigation. I see nothing that would help Your Honor in the resolution of the problem now before you or the problems that have yet to come before you that could be aided by a statement, argument, or whatever it is, by a lawyer or someone not a party to the litigation who may feel himself aggrieved in some way. I would suggest that if we open the door this way, we could certainly entertain a tremendous amount of counsel and spend a great deal of time doing it. I would earnestly urge upon Your Honor that Mr. Tyler, while I have the greatest respect for him, has no standing to be heard in the litigation.

588 The COURT: Where is Mr. Tyler from?

Mr. CARLSON: New York City. May I express myself, Your Honor, a little further on this point? Mr. Moore has made some statements on the record concerning what the issues are in this matter with regard to the issues of irreparable damage in Sylacauga. The Government is of the view that Mr. Tyler would enlighten Your Honor for whatever it is worth on this subject.

The COURT: "Enlighten" you mean within the confines of the evidence that you say is before me by affidavit?

Mr. CARLSON: Yes, by affidavit, by deposition, by the other forms, the entire record, yes.

The COURT: I assume Mr. Tyler is being paid for his trip.
I don't want him not to earn his salt. You may proceed.

589 Mr. MOORE: I will introduce your Honor to Mr. Tyler.

Mr. TYLER: Thank you, Mr. Moore.

Your Honor, I will be very very brief. There are really two reasons why we would like to bring to the Court's attention which is clearly of course a matter of our view only, argument only. This is certainly nothing more than that. But there are two points we would like to make and the reason why we want to make them is because we have a position somewhat different from the Government here.

As I understand the record, the Government has proposed in effect two alternative forms of order for consideration for the Court in this proceeding; one which allows the Sylacauga plant to open for the sole purpose of printing approximately three million four hundred thousand runs of four from Greater 590 Buffalo's Dunkirk plant. The other is what I would consider the more normal form of blanket, or shall we say harsher form of order, continuing in effect the now status quo.

Mr. MOORE: I don't want to interrupt, Mr. Tyler, but I think that since he has been informed of the record that position has changed. I think it was very clear we are today dealing only with that one order.

The COURT: I think he apparently has in mind the progress of the case.

Mr. TYLER: Yes. As I understand it, and I have seen the letter, the Government, although it has expressed its preference, has sent to the Court two alternative forms of order. I also understand, of course that counsel for Buffalo and other defendants perhaps have other views on those orders 591 which are a little different than the Government's.

The COURT: Well, let's put it this way: I have received two alternative orders. Now, just what the status of them is now, I don't think is of consequence. You go ahead.

Mr. TYLER: I want to make it clear to the Court that we are advocating from the point of view of being the only competitors in the southeast territory, and as a matter of fact the only competitor in the business east of the California-Nevada line of these defendants, with the two minor exceptions of Eastern,

which is a co-conspirator, but not a defendant in this case, and Star Color Press in Wilmington. So, you can see our selfish position.

We do wish to urge your Honor that insofar as Subdivision 5 of the ad dominum clause of the complaint filed by the Government in this case asks for divestiture of the Sylacauga plant from Greater Buffalo, that it may be in practical effect that notwithstanding the limitations of this proceeding from a procedural point of view, in practical effect we may have a resolution very shortly as a result of these proceedings now before your Honor of that very important part of the Government's ad dominum clause, and that is why we wish to just merely make our position known.

In that respect, we have two points. As your Honor knows, there has been considerable evidence and argument suggesting that one of the reasons for the position of the defendant, particularly the defendant, Greater Buffalo, today in this industry is that they have, if I may use the phrase, produced a better mouse trap. That may well be, but we are concerned because this case involves charges of monopolistic conduct in

593 a conspiracy under Sections 1 and 2 of the Sherman Act.

Now, those particular charges necessarily by the proof in this record, involve our client very drastically and, therefore, it is our concern because today really I submit this portion of the ad dominum clause divestiture of Sylacauga, may be as a practical matter resolved. I can't conceive that anybody is going to open Sylacauga and then be told not to open it.

Now, we want this Court, notwithstanding the limits upon the evidence, which I understand is before your Honor today and yesterday, to also consider some other evidence which is a matter of record, which goes to the monopolistic charges against these defendants because they concern us. They concern not only us for selfish reasons as a competitor of these

people, but we say it concerns the general public which 594 we are part of, because we are part of the market into which these people want to move this new plant. I ask, for example, the Court keep well in mind Exhibit 22 in the original Government affidavit, where Mr. Hirscheiser, a sales manager, is told by Mr. Koessler, "Let's start making it difficult for Newport." We are concerned about that. We are concerned also about such statements where we have a letter here in the record—

Mr. MOORE: If your Honor please, I don't want to seem rude, but I thought he was going to state a position and not argue evidence here.

Mr. TYLER: I concede it, Mr. Moore, and I concede again that my position necessarily is argument. It is not sworn testimony, there is no doubt of that.

The COURT: He is pointing up certain pieces of evidence, Mr. Moore, that he would like me to pay heed to.

595 Mr. TYLER: Precisely

The COURT: I don't think there is any harm in that.

Mr. MOORE: The only thing is it will invariably provoke a reply on our part and make these proceedings lengthy.

596 Mr. TYLER: Let me say this; I agree, and I do not, and I should not particularly make my remarks long, but I say that the Court understandably and necessarily is in a position where it is hearing a lot of evidence about what benefits will accrue to the community of Wilkes-Barre and Sylacauga and what disability will accrue to these communities in this question which is a serious one. You also remember, and this is my sole point, that this problem necessarily, your Honor, must be considered in the context of the charges of the violations, substantive and conspiratorily of the Sherman Act. Now, secondly, your Honor, in view of the testimony here and what I think is the concession by the defendants as well as the Government that there have been plans afoot for a great number of years by Greater Buffalo, International and perhaps others to open this plant in Sylacauga and because of the serious consequences economically, socially and otherwise, not only to the Government, the public, my clients, but also to these defendants, that in the interests of orderly procedure, since so much time has gone on already, that we would advocate to this Court that no serious damage, and indeed, maybe benefit would be achieved by going ahead on an early trial on the merits, rather than, in effect, now determining a part of the Government's request for final release.

597 598 The COURT: When do you propose that trial takes place?

Mr. TYLER: I recognize, Your Honor, that you here in the Western District of New York have a calendar problem, as I am told by others, but I would guess the early part or the earliest would be six months. This is a guess.

The COURT: That is being optimistic.

Mr. TYLER: It may well be. I know something of the problems of this Court.

The COURT: Go on with your next point.

Mr. TYLER: I do think that in view of the time, not only since the commencement of this action but because of the serious consequences and because certain things may not have come to the attention of the Court, it may be orderly procedure that it might be better if we wait six or eight months. I bring one more thing to your attention—

The COURT: You heard the evidence that they are
599 losing \$20,000 a month, didn't you?

Mr. TYLER: I heard that and I also heard the evidence that in recent years Greater Buffalo, in particular, has gone into the commercial printing as opposed to color comic supplement printing. I wonder if, for example, with problems of this kind which are now before the Court, if it might be of some interest and perhaps some important bearing might come out after full and further hearings on the complete merits, as to whether maybe commercial printing couldn't be done in Sylacauga as opposed to Wilkes-Barre and that in that way be of advantage to Greater Buffalo and that the plant might be not only salvaged but put to work profitably on that basis.

The COURT: What is your next point?

Mr. TYLER: I am coming to the end. These are my
600 only two points, one substantive and one procedural.

The COURT: I will invite you, if you wish, to write me a letter enlarging on what you said today providing you send all parties copies. You have permission to add to it. Do you want to say anything, Mr. Moore?

Mr. MOORE: No. I will restrain myself, Your Honor. I may have something to say about the letter.

Mr. CARLSON: Procedurally, how does Your Honor wish to proceed from here?

The COURT: I consider the evidence closed, the case submitted. Do you want to give me any additional briefs?

Mr. MOORE: I will submit a brief.

The COURT: You may submit a brief summarizing everything and making legal points if you wish. Do you feel the same way, Mr. Carlson?

Mr. CARLSON: I am not quite sure whether this will help Your Honor or hinder.

The COURT: I will let you figure that out.

601 Mr. CARLSON: Will Your Honor set a time?

The COURT: That is what I wanted to ask you next.

Mr. MOORE: I think I need about ten days, Your Honor.

The COURT: Suppose you exchange briefs in ten days with three days for reply and exchange.

Mr. CARLSON: May I ask one further question in this matter and that is when the time comes if the Court is going to issue its order, I would request on the part of the Government that it be on notice, if I may.

The COURT: All right.

(Thereupon at 3:30 p.m. o'clock the proceedings were adjourned.)

(Caption Omitted in Printing)

602 FINDINGS OF FACT AND CONCLUSIONS OF LAW

MOTION FOR PRELIMINARY INJUNCTION

The complaint charges, in part, that the defendants, Greater Buffalo Press, Incorporated (herein called Greater Buffalo), the King Features Syndicate Division of The Hearst Corporation (herein called King), Newspaper Enterprise Association Inc. (herein called NEA) and The International Color Printing Company (herein called International) have committed violations of sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) and of section 7 of the Clayton Act (15 U.S.C. § 18). The complaint prays, among other things, that Greater Buffalo be required to divest itself of ownership of International and ownership control of and participation in the plant operated by Dixie Color Printing Corporation (herein called Dixie) at Sylacauga, Alabama, and a plant operated by Southwest Color Printing Corporation (herein called Southwest) 603 in Lufkin, Texas. These latter two corporations are parties defendant to this action for the purposes of relief only.

The plaintiff has instituted by an order to show cause a motion for a preliminary injunction enjoining Greater Buffalo, International, Dixie and Southwest from:

(a) Consolidating or intermingling the business operations, assets or personnel of International with those of Greater Buffalo, Southwest or Dixie or any other person;

(b) Conveying, selling, leasing or transferring in any manner newspaper customers or runs, printing presses, machines, equipment and parts thereof, and any other assets or any stock of International to any other person;

(c) Printing color comic supplements at the Sylacauga plant of Dixie with printing presses, machinery, equipment and parts thereof obtained from or shipped by International or printing color comic supplements at such plant with personnel of International or printing color comic supplements at such plant with personnel of International or printing color comic supplements at such plant for customers supplied with such supplements by International at any time since June 1, 1955.

This motion is predicated on the claim upon the part of the plaintiff that a preliminary injunction is necessary to prevent Greater Buffalo, International, Southwest and Dixie from making any disposition of the business or assets of International which would frustrate the court in the exercise of its power upon a final determination of the action to effect divestiture as prayed for in the complaint. No relief is sought against

King and NEA in the order to show cause which brought
604 on the motion for a preliminary injunction, although they have been heard on the motion, together with the *amici curiae* indicated above.

The court deems it unnecessary to rule on allegations of violation of the Sherman Act in view of the concession by defendant Greater Buffalo (and the finding of this court) that the test for the granting of a preliminary injunction is satisfied under the Clayton Act allegations of the complaint. This test is set forth in *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953). Defendant's concession that a preliminary injunction should issue is stated directly in its brief submitted after the final hearing on the application, at page 4, as follows:

"The defendant parties to this motion have controverted only so much of plaintiff's evidence as bears on this motion. They concede that there are difficult and substantial questions which would justify the Court, as a matter of law, in entering a temporary injunction to preserve the competitive *status quo*."

On the entire record herein, the court enters the following findings of fact and conclusions of law, for purposes of this motion only.

Findings of Fact

1. The printing and sale of color comic newspaper supplements (herein referred to as comic supplements), which consist of newsprint printed with colored inks containing reproductions of copyrighted color comic features, are found to be the subject of interstate commerce within the meaning of section 7 of the Clayton Act (15 U.S.C. § 18). The 605 defendants are "engaged in commerce" within the meaning of section 7 of the Clayton Act (15 U.S.C. § 18).

2. The significant companies now competing in the business of printing comic supplements for sale to newspapers are: (a) defendant Greater Buffalo, Buffalo, New York, (b) defendant International, Wilkes-Barre, Pennsylvania, (c) Eastern Color Printing Company, Waterbury, Connecticut, (d) Southern Colorprint Corporation, Newport News, Virginia and (e) Acme Colorprinting Corporation, San Bernardino, California.

3. The significant companies now competing in the sale of comic supplement printing to newspapers are: (a) defendant Greater Buffalo, (b) defendant King, (c) defendant NEA, (d) Eastern Color Printing Company, (e) Acme Colorprinting Corporation and (f) Atlantic Features and Printing, Inc., Newport News, Virginia, the exclusive sales agent for Southern Colorprint Corporation.

4. In 1955, the market for the printing of comic supplements for sale to newspapers, measured in terms of 4-page standardized sections, was divided approximately as follows: (a) defendant Greater Buffalo 42%, (b) defendant International 40%, (c) Eastern Color Printing Company 5%, (d) Southern Colorprint Corporation 1%, (e) Acme Colorprinting Corporation 7% and (f) Buffalo Colorpress, Inc., Buffalo, New York [acquired by Greater Buffalo in 1955] 5%.

5. In June 1955, defendant Greater Buffalo acquired 606 all of the stock of the defendant International.

6. Defendant Greater Buffalo contends that the relevant market for purposes of measuring the effect of this acquisition includes not merely the market of color comic supplements printed by independent printing concerns but also all color comic supplements distributed by newspapers in the United States, including those produced by the consuming newspapers themselves. Defendant further contends that the said acquisition did not substantially lessen competition or tend to create a monopoly in the color comic supplement indus-

try within the meaning of the Clayton Act, but concedes as indicated above, and the court finds, that, sufficiently serious, substantial and difficult questions have been raised to justify the court's granting a temporary injunction.

7. Since the date of the acquisition of International in 1955, defendant Greater Buffalo has exercised control over International and consumed and intermingled assets of International by the use of equipment, manpower and funds advanced by International and used by Greater Buffalo in the acquisition of land, construction of building and plant facilities, and general preparation of a printing plant at Sylacauga, Alabama, now owned by defendant Dixie. One key former employee of International is presently employed by Dixie in a general supervisory capacity and has been employed at the Sylacauga plant during much or all of the preparation of the plant at
607 Sylacauga. Other employees of International have now been returned to International.

8. There is further evidence that Greater Buffalo has controlled the placement of various printing runs belonging to International and has taken some of them for production at its own facilities.

9. Further consumption and intermingling of assets of International by Greater Buffalo, as above set forth, pending the completion of this action, or by any other defendant hereto, other than by International itself for the ordinary use of its business, will tend to frustrate any attempt of this court to restore International to an independent competitive business, able to operate effectively, efficiently and profitably as it presently exists, and would, thereby, threaten immediate irreparable injury to International.

10. The plant at Sylacauga is ready to commence business, but is closed under a restraining order issued by this court and maintained in force until final decision of this application by consent of the parties. The opening of the said plant, without controls imposed by this court, will threaten immediate irreparable injury to the economic existence of the defendant International in the event this court later determines that the prayer for divestment of International from Greater Buffalo should be granted, inasmuch as International will not be
608 able to freely compete for business in the southern states as long as it remains a wholly owned subsidiary of defendant Greater Buffalo.

11. The opening of the Dixie plant would threaten immediate irreparable injury to Greater Buffalo's sole remaining comic supplement printing competitor in the southeast, Southern Colorprint Corporation and hence threatens irreparable damage to the public interest in competition, by reason of enhancement of defendant Greater Buffalo's apparent monopoly position during the pendency of this action.

12. There is general economic distress in both the areas of Wilkes-Barre, Pennsylvania, and Sylacauga, Alabama.

13. The public interest requires that the plant at Sylacauga, Alabama, be permitted to operate, but under controls which will enable International to retain its independent ability to operate effectively, efficiently and profitably, as it presently exists, in the event this court ultimately includes a provision for total or partial divestment of Greater Buffalo's interest in International in the final decree herein.

14. The public interest further requires that Dixie Color Printing Corporation be protected by order of this court against possible restrictions imposed by defendant Greater Buffalo upon or representations made to customers dealing with Dixie which might have the effect of diverting business from Dixie
in the event the final decree herein includes a provision
609 for total or partial divestment of Greater Buffalo's interest in Dixie.

CONCLUSIONS OF LAW

1. This court has jurisdiction to enter a temporary injunction herein pursuant to section 15 of the Clayton Act (15 U.S.C. § 25).

2. The plaintiff has raised serious, substantial and difficult questions going to the merits of the allegations of the complaint with respect to violations of section 7 of the Clayton Act (15 U.S.C. § 18). Due consideration has been given to these questions and the court has concluded that their determination is not necessary for the purposes of this motion and that they should be the subject of more deliberate investigation in a plenary trial of these issues upon the merits.

3. The protection of the public interest in light of the facts indicated above justifies and requires, in the court's opinion, the issuance of a temporary injunction with the terms and conditions contained in the temporary injunction issued and filed

concurrently with the issuance and filing of these findings of fact and conclusions of law.

John O. Henderson

JOHN O. HENDERSON,

United States District Judge.

DATED. June 22, 1962.

[Caption Omitted In Printing]

610

ORDER

The court, having examined the complaint filed herein on the 6th day of January 1961 (having heard and considered arguments of counsel for the parties on plaintiff's motion for preliminary injunction), and having duly considered the facts set forth in the affidavits, exhibits and testimony submitted in the premises by the parties hereto, it is

Ordered that, pending final disposition of this action, the defendants, Greater Buffalo Press, Incorporated, The International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, are hereby enjoined from:

1. Further consolidating or intermingling, except as provided in paragraph 4(f) below, the business operations of the defendant, The International Color Printing Company, or any of its assets or operating personnel, with those of the defendants, Greater Buffalo Press, Incorporated, Southwest Color Printing Corporation or Dixie Color Printing Corporation, or any other person,

2. Conveying, selling, leasing or transferring in any manner any newspaper customers or runs, printing presses, machines, equipment and parts thereof, or any other assets of, or in the possession of, or any stock of, the defendant, The International Color Printing Company, to the said defendants, or any of them, or to any other person;

3. Printing color comic supplements at the plant of
611 the defendant, Dixie Color Printing Corporation, Sylacauga, Alabama, with personnel employed by the defendant, The International Color Printing Company:

(a) since April 3, 1961, or

(b) between June 1, 1955 and April 2, 1961, unless (1) it shall immediately execute a release in favor of any such employee specifically releasing him from any contract commit-

ment to Greater Buffalo Press or any of its subsidiaries only to the extent that he may thereafter accept any offer now or hereafter made by The International Color Printing Company to return to its employ, without prejudice to prorata compensation by Greater Buffalo or its subsidiary at the rates heretofore established until termination of his employment, said release to be effective until the final termination of this litigation if divestiture (total or partial) is not ordered by the final decree of this court, or until one year following the final termination of this litigation if divestiture (total or partial) is ordered; and (2) it shall immediately and continuously thereafter, until the termination of the effectiveness of said release, provide The International Color Printing Company with copies of all employment contracts, and complete information concerning rates of pay and other benefits accorded said employee from time to time; and

612 4. Printing color comic supplements at the plant of the defendant, Dixie Color Printing Corporation, Sylacauga, Alabama, with printing presses, machinery, equipment and parts thereof obtained from, or shipped by, the defendant, The International Color Printing Company, at any time since June 1, 1955, except upon the following terms and conditions:

(a) that within thirty days of the date of entry of this order the plaintiff and the defendant Greater Buffalo Press each file with this court a list of three appraisers recommended by them as qualified to conduct the appraisal provided for in subparagraph (b) below and certified by the proponent to be independent of any interest in or of the proponent, and that within fifteen days after such filing is completed, each said party may submit to the court affidavits objecting to the appraisers suggested by the other party and giving information in support of appraisers propounded by it (these affidavits to be kept at all times confidential for use of the court only and not to form part of the filed record in this matter unless hereafter directed by the court to be filed under seal), after which submission, this court will select an appraiser from said recommended lists or independently of said lists;

(b) that after the appointment of an appraiser by this court, he make an appraisal of the current market value 613 of each item of machinery and equipment at said Sylacauga, Alabama, plant (such appraisal to be filed within thirty days of the date of entry of the order appointing the

appraiser), for which purpose said appraiser shall be granted free access to the Sylacauga plant premises, and the expense of such appraisal shall be borne by the defendant Greater Buffalo Press, Incorporated;

(c) that minor machinery, equipment and parts (by which is meant machinery, equipment and parts the value of which does not individually exceed the sum of \$1,000.00 and which will not be necessary for the effective, efficient and profitable operation of The International Color Printing Company, as it presently exists, in the event this court ultimately includes a provision for total or partial divestment of Greater Buffalo's interest in International in the final decree herein) may be conveyed, leased or transferred by The International Color Printing Company to Greater Buffalo Press, Incorporated, or Dixie Color Printing Corporation, for use at the Sylacauga, Alabama, plant provided (1) that an instrument of conveyance, lease or transfer be executed which shall recite the provisions of this order and make such conveyance, lease or transfer subject to the provisions herein contained, (2) that immediately upon the execution of said instrument or of any executory agreement to convey, lease or transfer, notice 614 thereof, with a copy of the said instrument or agreement, be served on the plaintiff by certified mail directed to the United States Department of Justice, Antitrust Division, Washington 25, D.C.; (3) that an affidavit be obtained from an officer of The International Color Printing Company, certifying [a] that the equipment concerned is minor equipment as that term is used in this order, [b] stating the date and source of acquisition of said machinery, equipment and parts, together with the original cost and present value thereof, [c] stating facts affirmatively showing that the transfer of said machinery, equipment or parts will not be inconsistent with the intent of this order, and [d] stating the source of defendant's information, and that said affidavit be served on plaintiff in the manner specified above; (4) that an affidavit be obtained from an officer of Greater Buffalo Press, Incorporated or Dixie Color Printing Corporation affirmatively showing why the conveyance, lease or transfer is necessary for the effective operation of the Sylacauga, Alabama, plant, said affidavit to be similarly served on plaintiff; (5) that the plaintiff shall have fifteen days after the service upon it of the papers above specified in which to examine said equipment (for which purpose it shall be granted free access to the premises of The

International Color Printing Company) and/or to object to the transfer of said machinery, equipment or parts by filing notice of objection (stating why said transfer is alleged 615 to be in violation of this order) with the clerk of this court and serving the same on defendants The International Color Printing Company, Greater Buffalo Press, Incorporated, and Dixie Color Printing Corporation by certified mail directed to their respective places of business; (6) that unless said objections are acceded to by defendants, they shall be submitted to the court for decision without oral argument but with leave to present the parties' respective positions by letter, unless otherwise directed by the court on its own motion or on application of any of the said parties; and (7) that no actual transfer of physical possession of said machinery, equipment or parts shall be made to the Sylacauga plant until expiration of the said fifteen days without objection being made by plaintiff or, in the event that objection is made, until the objection is withdrawn or until further order of this court;

(d) that the defendants, Greater Buffalo Press, Incorporated and Dixie Color Printing Corporation, do not print at such Sylacauga plant at any time prior to the final disposition of this action, any color comic supplement printing runs other than for newspapers whose supplements are now printed by direct contract with Greater Buffalo at its Dunkirk, New York, plant, which newspapers must be located in the states of 616 Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina and North Carolina; except in accordance with subparagraphs (e) and (f) below:

(e) that the defendants, Greater Buffalo Press, Incorporated and Dixie Color Printing Corporation may, notwithstanding the provisions of the foregoing subparagraph (d), accept printing contracts at Sylacauga, Alabama, for other newspapers than those whose supplements are now printed by direct contract with Greater Buffalo at its Dunkirk plant provided (1) any contract entered into contain an extract copy of this order, including a quotation of this subparagraph and of subparagraph (d) above; (2) that any such contract be expressly made subject to this order; (3) that a copy of the contract be served on plaintiff by mail directed to the Department of Justice, Antitrust Division, Washington 25, D.C., immediately after execution; (4) that the said defendants serve an affidavit on plaintiff in the same manner stating that the newspaper

run concerned has not, since June 1, 1955, been handled by defendants The International Color Printing Company or The Hearst Corporation, or by Southern Colorprint Corporation or its sales agent Atlantic Features & Printing, Inc., or any of their subsidiaries, divisions or other entities connected in business with them; (5) that the plaintiff shall have forty-five days after the service upon it of the papers above specified in which to object to such contract by filing notice of objection with the clerk of this court and serving the same on defendants Greater Buffalo Press, Incorporated, and Dixie Color Printing Corporation by certified mail directed to their respective places of business or to their attorneys of record; (6) that unless said objections are acceded to by defendants, they shall be submitted to the court for decision without oral argument but with leave to present the respective positions by letter, unless otherwise directed by the court on its own motion or on application of any of the said parties; and (7) that in the event this court sustains the objections made, performance of said contract at the Sylacauga, Alabama, plant shall be terminated within thirty days of the filing of the order sustaining the objections;

(f) That the defendants Greater Buffalo Press, Incorporated and Dixie Color Printing Corporation, at any time after the Sylacauga plant has been in full operation for more than six months (in the event this case is not disposed of before that time), may apply to this court for leave to transfer specific runs from The International Color Printing Company to the Sylacauga plant and to take accounts not eligible to be handled at Sylacauga under other provisions of this order, such application to give detailed information concerning the economic situation of the Sylacauga operation after six months experience, together with full information, to the extent that it is available or obtainable, of the economic condition of The International Color Printing Company, in the event application for transfer of runs now or formerly handled by International is applied for, and said application to propound a specific plan (incorporated in a proposed order) which would accomplish the relief applied for and at the same time guarantee no irreparable loss thereby to The International Color Printing Company in the event this court ultimately includes total or partial divestiture provisions in the final decree herein or to presently existing independent procedures;

(g) That none of the defendants, Greater Buffalo Press, Incorporated, The International Color Printing Company, Southwest Color Printing Corporation or Dixie Color Printing Corporation, shall represent to existing or prospective color comic supplement printing customers that the color comic supplement printing for such customer will eventually be done by one or any of said defendants at the Sylacauga plant;

(h) That, except for contracts now in existence that so provide, none of said defendants, Greater Buffalo Press, Incorporated, The International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, shall solicit or sell color comic supplements on any basis other than actual transportation cost incurred by such defendant or the newspaper involved;

(i) That the defendant, Greater Buffalo Press, Incorporated, its officers and directors, and the defendant, Dixie Color Printing Corporation, shall not convey, sell, lease, transfer or encumber in any manner the stock of Dixie Color Printing Corporation, or any of the substantial physical assets of the plant at Sylacauga, Alabama;

(j) That every three months from the date of entry of this order the defendant, Greater Buffalo Press, Incorporated, shall certify to this court the identity and volume (in terms of fours) of each color comic supplement printing run printed at the Sylacauga plant during such three-month period;

(k) That, in the event that the court eventually orders that the defendant, Greater Buffalo Press, Incorporated, shall divest itself of the stock and assets of the defendant, Dixie Color Printing Corporation, those newspapers then having their color comic supplements printed at said Sylacauga, Alabama, plant shall have the right to make arrangements with the new owners, their sales agents, or any other persons, for the printing of such color comic supplement runs, notwithstanding any existing contract or arrangement between Greater Buffalo Press, Incorporated and such newspapers.

John O. Henderson
 JOHN O. HENDERSON,
United States District Judge.

Dated: June 22, 1962.

620 [Caption Omitted in Printing]

Proceedings held before Hon. JOHN O. HENDERSON,
 United States District Court Judge, Western District of New

York, on December 18th, 1962, at Buffalo, New York.

Appearances: *Elliott H. Feldman & John W. Poole, Jr., Esqs.*, Attorneys for the Plaintiff.

Raichle, Moore, Banning & Weiss, Esqs., by *Frank G. Raichle, Esq.*, and *Ralph L. Halpern, Esq.*, Attorneys for Greater Buffalo Press, Incorporated.

Gallop, Climenko & Gould, Esqs., by *Jesse Climenko, Esq.*, and *Herbert Brownell, Esq.*, Attorneys for the Defendants, The Hearst Corporation.

621 PROCEEDINGS OF DECEMBER 18, 1962, COMMENCING AT
10:00 O'CLOCK A.M.

The COURT: Whenever you are ready, Mr. Raichle.

Mr. RAICHLE: Your Honor, this is the adjourned return day of the motion on the part of the defendants Greater Buffalo Press, Incorporated, the International Color Printing Company, Southwest Colorprinting, Dixie Color Printing, to modify and amend a preliminary injunction made and entered by the Court on June 22, 1962; which temporary injunction, among other things, imposed restrictions and restraints with respect to the proposed operation of the printing plant at Sylacauga, Alabama. Indeed, in view of the evidence of changed circumstances which has been developed, that is, changed cir-

622 cumstances the entry of the preliminary injunction, the motion is to vacate and annul the temporary injunction, to make a new and supplemental finding. The Court has inherent power and control over its orders and decrees, and it should be noted that the motion is made upon all of the papers and proceedings had and taken herein thus far. That, of course, includes the pleadings, the affidavits, the depositions, exhibits and other evidence upon which the preliminary injunction was entered, and the affidavits annexed to the motion or the notice of this motion is the affidavit by myself and one by Mr. Hammond, and accompanying basic exhibit A, by designation, and the note of the independent public accountant which is an integral part of the reply affidavits of Elliott H. Feldman.

623 served yesterday on behalf of the Government; and particularly, the deposition of one Jack R. Hornaday, taken in New York on December 5 and 6 of this year, and certain other proof which, with Your Honor's permission, we will offer on this occasion. Now, Your Honor will recall that Mr. Feldman and I met with Your Honor on October 29 of this year at which

time I furnished Mr. Feldman with a copy of the projections which are now included in Exhibit A annexed to our motion papers, and designed primarily to show the results of operations, if they had been conducted or were undertaken at Sylacauga; to show that the permitted operation would not be economically feasible. At that same meeting with Your Honor,

I announced my desire to take the testimony of Jack R.
624 Hornaday to establish the fact that the Southern Color
Printing Company had greatly increased its business at
the expense of International Color Printing and the defendants
while we were under these strictures and restraints and to de-
velop other pertinent evidence from Hornaday. It was stated
by Your Honor that we could have a broad and searching ex-
amination of Mr. Hornaday in that regard, and Your Honor, of
course, will recall Mr. Hornaday is the initiator in the first
instance of these proceedings. He was a former sales manager
or assistant sales manager of King Features Division of Hearst.
And by the way, I pause at the mention of the word, "Hearst".
to say that, by the way of information to the Court and
625 counsel, that Mr. Climenko, who represents Hearst and
Mr. Brownell stated they would be here at 10 o'clock.

The COURT: They just came in, Mr. Raichle. Would you
gentlemen like to come up?

Mr. RAICHLE: Just by way of refreshing Your Honor's recol-
lection, I assure you very briefly, Mr. Hornaday was the former
sales representative of King Features, which is a division of
Hearst, and Hearst is one of the defendants; indeed, as I read
the complaint, the primary defendant, the one against whom
predatory practices are charged; and Mr. Hornaday was the
man who was in charge of the Hearst operation or the King
Features operation at the time of these alleged predatory prac-
tices, none of which have been established, I hasten to say. In
any event, he left Hearst, King Features, if you please, in

1955, under aggravated conditions, I think importantly
626 reflecting upon his integrity, and went with a competitor
whom he had been directed to inquire about with respect
to its activities. Soon after he went with this competitor,
Southern Color Printing Company by name; having been orga-
nized in his own behalf—in behalf of Southern Color Printing
Company—something called Atlantic Features; where he pro-
ceeded to sell features for something called the Hall Syndicate,
and printing for Southern Color Printing. He proceeded to sell

both features and printing, one of the things criticized when he was so doing for Hearst. He sought by letter, which is in the record, the early record, a part of this motion, of course, in consequence thereof, to, as I put it, in effect blackmail Hearst for some money, threatening treble damage action and threatening to go to the Department of Justice to complain about the things he used to do on behalf of Hearst. Like all the reformers—the definition goes, one who wants to stop other people from doing that which he used to do. At any rate, he went to the Department of Justice, and was evidently received with open arms, and based upon information furnished by him, largely to the effect that Southern Color Printing Company and Atlantic Features Company which he had proceeded to organize and represent, that is, Atlantic Features Company—Southern Color Printing had been in business since 1946—he began to sell features and printing in competition with our plant International Color Printing,

Greater Buffalo Press. These names are all, I am sure, lively in Your Honor's recollection. And the business of Southern Color Printing grew under his salesmanship. His competition was effective, as the figures will show and demonstrate. At the instance of Mr. Hornaday and based upon information furnished by him, we had the Grand Jury proceeding here in Buffalo where the Grand Jury declined to indict, or recommended a civil suit. This suit was brought in consequence thereof. Mr. Hornaday furnished the affidavit in support of the original application made in April of 1961 for an injunction, temporary in character, restraining the opening and the operation of the Sylacauga plant. Mr. Hornaday gave a lengthy deposition; and plaintiffs case, as far as its application for relief, was importantly based upon not only information furnished by Mr. Hornaday and his associate, Mr. Smith of Color Printing, but also an affidavit and testimony furnished by those gentlemen. Now then, on June 22, 1962, Your Honor entered a temporary injunction, which is an order which we moved against from which we seek relief and with respect with the findings upon which it is based, we ask for amendments and supplemental findings in the light of additional proof and we desire to point to chain of circumstances compelling the character of the relief of which we seek.

Now, Your Honor will recall and I don't mean to transform this opening statement into an argument, but Your Honor will

recall that the Government at the time of its application and in support of its application for a temporary injunction, made a very strong effort to convince Your Honor and in a measure succeeded, that Southern Colored Printing Company could not

stand the competition of a plant at Sylacauga and in the
631 southeastern part of the United States, in the area where Southern Colored Printing and Mr. Hornaday with his features company had a competitive advantage and that if the plant at Sylacauga opened that Southern Colored Printer would sustain irreparable damage and that he would cry, and the mouthings were all in favor of the expression "status quo", "competitive status quo".

Well now, while we have been under the strictures and restraints and unable to compete with Mr. Hornaday and Mr. Smith, that is the Atlantic Features and Southern Colored Printing, let me tell you what has happened. At the time that Mr. Hornaday went with Southern Colored Features, Southern Colored Features was printing some few hundred thousand, four-page sections per week. That seems to be the unit at which

632 everybody deals in this industry when discussing the volume, so we will, with Your Honor's permission, talk in terms of weekly 4's, which means weekly supplements of colored comics. And it now prints, that is, Southern Colored Printing does 3,150,000, four-page colored comic supplements, but more important and more pertinent to this application and more clearly demonstrating the inequitable and unforeseen effect of this order, Southern Colored Printing Company at the time that the order was handled was printing 1,200 and some odd thousand 4's per week. Under this order, while the order has been outstanding; that is I speak of the initial restraint of April 1961, as supplemented by the restraints and the temporary injunction of June 22, 1962, that business has grown to 3,150,000. He has more than doubled his business, speaking of South-

ern Colored Printing Company. Now, where did the
633 business come from? Except for comparatively few, it all came from International Colored Printing business, which they took away from International Colored Printing. Your Honor will recall the bleeding hearts in the bosoms of the politicians for whom Mr. Feldman spoke, in the depression area of Wilkes-Barre and the union representatives and forlorn picture which was painted of a deteriorating an already aggravating situation if business were permitted to go under our agencies from International Color Printing to the South from Alabama

which you will recall was also a depressed area, but our friends of the Department have raised no voice of protest, no word of criticism, but on the other hand they seem to clamp their hands in approval and approbation of the fact that the spoon-feed, pampered, favored, protected Hornaday, Atlantic Features and Southern Colored Printing Company could take that large volume of business from International Colored Printing Company. Now, I speak within the record which will be developed here when we read, with Your Honor's permission, Mr. Hornaday's deposition, but I digress from this for just a moment to tell you of our difficulties.

After leaving your office on the occasion when Mr. Feldman and I met with Your Honor on October 29th, I noticed the deposition of Mr. Hornaday for the fourteenth or the fifteenth of November. A subpoena was issued out of the Southern District of New York on November 8th. Mr. Halpern, my associate, attempted to serve it on the day, but was unable to. He was first told that Mr. Hornaday was out, then he was at home. That was Thursday, November 9th. A similar effort was made without success on November 10th. A process server went out to Scarsborough and after a brief skirmish found Mr. Hornaday and served him with the subpoena, returnable the following Wednesday.

On the following Tuesday, an order to show cause was obtained by Mr. Hornaday with a stay, staying our examination on the flat sworn statement that he had not been served with a subpoena. That motion, and he made a motion to quash on the basis of his affidavit, that motion was argued before Judge McMahon in the Southern District. Testimony was taken and Judge McMahon found as a fact that the subpoena had indeed been served and Mr. Hornaday was evading service. He stated that from the bench. The minutes of that hearing before Judge

McMahon, I am assured by the reporter in New York, who has been ill, will arrive some time during the day.

Well, the motion to quash the subpoena was denied, but the hour for the examination had passed. We didn't at that moment bother with contempt, we noticed anew the taking of the deposition and we were met with another motion this time, a motion on the part of Mr. Hornaday, claiming that he was ill, recovering tortuously from the effects of a very serious operation and could not attend the examination and there was the usual protestations in that regard and offers of physical

examination and it developed that this gentleman, in failing health, on the day that we sought to examine him, on the day that we were told he was unable to appear by reason of physical incapacity, spent five hours in the Department of Justice and more importantly, he closed a contract taking hundreds of thousands of 4's in business from International Color Printing.

637 Well, on the 5th or 6th of December last week, I guess it was the 6th and 7th, anyway we examined Mr. Hornaday and, as I say, we desire as part of our proof here this morning, to put forward and in evidence the deposition of Mr. Hornaday from which we claim the fact appears that this competitive advantage which they conceived as being abused, as they claim was unnecessary anyway, demonstrates right on the face of it, and from his sworn testimony—reluctantly given—that the consumers, the newspapers in the area, are losing substantial in freight savings; that as he now claims he doesn't need the order for his protection; that he can compete with us effectively, anyway; that he knows of no complaint to make against Greater Buffalo Press, except for some 639 inconsequential number of runs which were more of a nuisance than a profit in Sarasota, and another taken years ago, except for that we never took a dollar of his business although he has taken hundreds of thousands of fours from us; that he doesn't know of a single complaint which he could have against us; that his only complaints are the alleged predatory acts of Hearst or King, of which he was the perpetrator, and he says he is able to compete, willing to compete; implies that he is anxious to compete with us even without an order such as gives him an allocated market free from the competition of Sylacauga.

Now then, I don't think it would serve a useful purpose, and it would be unduly burdensome to Your Honor if I, at this juncture, were to mention or to attempt to develop 640 quickly some facts and figures, but may I on this, my first opportunity, state what I conceive to be a condition of the record and the basis on which I am proceeding? Now we have set forth in our motion papers a reference to the fact that the Government has earlier stated that it is in the public interest for the Sylacauga plant to open. I assume that that position has not been changed. We have set forth what I conceive to be a strong showing and statement of fact that the

printing of the 3,434,000 four-page standard supplements per week as permitted in the temporary injunction, will not permit of an economically feasible operation and will condemn any operation in Sylacauga on that basis to a substantial loss.

We have set forth, as I say, projections in Exhibit A,
641 which had been checked as I indicated, by our public accountants and these projections have not been controverted by answering affidavit; they have not been disputed by the Government in any way that has been brought to my attention, and I conceive the record to be as of the moment, that the figures set forth in my projections are not challenged. They could only be in orderly procedure and, as I understand the practice, challenged in an answering affidavit so that we would have an issue on that subject before Your Honor. Mr. Feldman served me with an affidavit which makes no mention of our projections. He admits the substantial increase in the Southern Color Printing Company business and has some reference to freight rates—not quite clear to me as to their
642 pertinency—but save for that, there has been no paper filed by the Government or at least served on me, so I take it there has been no dispute about our figure, which we urge upon Your Honor as the basis for a finding in that respect, as one of the grounds of our motion. Our motion papers show, we urge upon Your Honor, now, the inequitable state of affairs resulting from the temporary injunction and we urge that the situation cries for amendment and change, and I know that contrary to Your Honor's intention, this temporary injunction has hurt people who should not be hurt. There is \$1,350,000 of newsprint that would be purchased for the operation which we desire at Sylacauga, and purchased from United States Mills.

The same amount is now being purchased in Canada.

643 There is a saving of \$160,000.00 or thereabouts to the newspapers in the area, the transportation costs, all developed in Hornaday's affidavit if there could be any questions otherwise about it. There is the Government protected, fostered monopoly of the business by the Southern Color Printing Company and I could see how, on the basis of the previous showing counsel might argue for a continuance of the status quo but I don't believe Your Honor ever could see that under the banner of status quo that Southern Color Printing would be permitted to take all this business without competition, and I don't believe that Your Honor ever conceived as he listened to the cries of those who pled for Wilkes-Barre that Southern

644 Color Printing would be allowed to take with abandon the business which the Government urged that this order was protecting.

And let me not be unduly repetitious but let me point out, as Mr. Hornaday has said, as you will hear when his deposition is read, that he intends to take all the business that he can; he feels uninhibited and he doesn't care a bit about Wilkes-Barre; that's in his words, you will hear it, that on the day we sought his testimony, he was seeking our business, that he has bids out now, expects to hear from any day, and he expects to continue to do so, and I think I would reserve with Your Honor's permission, further comment but with these brief opening remarks which have not covered the grounds with any elements

of completeness, I would like to present our case. For 645 counsel's information, I would like to first read the deposition of Mr. Hornaday. I would like to rely upon my

papers for the establishment of the figures, the projections at least until in some legal way they are called in question, if indeed they could be. Interesting in that connection is the fact that our projections were furnished to Mr. Hornaday and to Mr. Smith, the Southern Color Printing factotum. Almost as soon as they were furnished to the Government and we have the unholy alliance between the Department of Justice and this man, Hornaday, and this man, Smith—amusing if it weren't so serious—we subpoenaed the contracts obtained by Southern Color Printing during this period of operation by them under

the restraint imposed upon us, and quite unabashed, 646 counsel and Hornaday come forward and say, "Oh if you saw those contracts and you knew our prices, we would suffer a competitive disadvantage."

The COURT: Let me ask you what you conceive to be the crux of the Southern Color to the market whereby they obtain this advantage that you talk of?

Mr. RAICHLE: Their geographic location and their ability to take business from International Color Printing on account of the freight savings, the transportation savings which they are able to give in this area to the consumer which International Color Printing apparently can't meet. Now his knowledge, that is, Hornaday's knowledge of Hearst's costs in the early days, now knowledge of our costs in every detail, complete ignorance

on our part of their costs, widespread knowledge on the 647 part of consumers that the Sylacauga plant can't be used by us to serve them in this area, the spectacle, if

I might say so, of our competitors sitting in the library of the Department of Justice with our figures, studying them, learning them, knowing how to take business from us, and then telling us that we can't see theirs because it would be a competitive advantage or an advantage to us, and a disadvantage to them in deleting every bit of information concerning 648 costs and prices. As I say, I have not covered it, I have rambled a bit. It was intended to be an opening statement as to all that has gone on before and partly—

Mr. FELDMAN: May I make the suggestion? I would like the opportunity now to put some remarks on the record in answer to Mr. Raichle, and that may cut a great deal of the proof. Many of the things he speaks about the Government is really not at issue with at all.

Mr. RAICHLE: Very well, Sir, I will subside while you do that.

The COURT: I would like to hear from you whether you conceive this advantage has gone to Southern Color since my order.

Mr. FELDMAN: No, sir.

The COURT: Have they gained this advantage, this market?

Mr. FELDMAN: No, sir, not because of the order. We say this order had a salutary effect, it restored competition 649 in this area. I think that the basic position between the defendants and the Government in this case is this; on both hands you have a taking away of assets and business accounts, called the guts of the business, from International Color Printing Company. At least, Greater Buffalo Press would like to take the assets out. They are restrained under this order of this Court of June 22, 1962. On the other hand, you have a company in the Southwest called Southern Color Printing; this concern has taken away business since the order of this Court and particularly since about the end of 1961, from International Color Printing.

The COURT: In Wilkes-Barre?

Mr. FELDMAN: Yes, no question about it.

The COURT: What was the hue and cry about the great trouble at Wilkes-Barre? Weren't you trying to impress 650 me zealously about the failing economy, the troubles in Pennsylvania? Not that I was impressed, that was the big argument?

Mr. FELDMAN: It was. That was only after there was some application made, something put in the record in regard to the

economic plight of the people at Sylacauga. Up to that point we had spoken to people in Wilkes-Barre, and we told these people that the economic plight did not concern us in our legal urgings in this case. That came in later. Initially, that had nothing to do at all, as far as we were concerned. Basically, our position is based upon the following, in paragraph 27 of our complaint, we allege a violation of Section 7 of the Clayton Act. That refers to the acquisition by Greater Buffalo Press of International. We claim that single act, that acquisition, violated

the law. Now, in the past the courts have held when a
651 *prima facie* case is made out, that the violation is unlawful. Then the Government is entitled to an injunction, and the purpose of that injunction is to maintain the status quo between the two companies. That, of course, brings up the question, what do you mean by status quo. Status quo, in regard to Section 7, in regard to a Section 7 case, does not mean the Court must pass and sit upon the industry and act as judicial arbitrator as to what goes on. All it means is that the company which did the acquiring cannot touch the assets of the acquired company. In other words, they remain separate and distinct. They do not operate in any way as a single entity. That is the whole purpose of this injunction. When the separation is

kept, then and only then can the Government actually
652 win the case instead of winning a lawsuit or a piece of paper. Your Honor may recall we started out, this is the basic contention, and I would like to refer particularly at this time to the actual order to show cause which Your Honor signed on April 3, 1961. First of all, the order itself, which Your Honor signed, consists of six pages. Until the return date of the motion it prohibits certain things from taking place; namely, the co-mingling and intermingling of International's assets and then going on to page 6, it states that during the pendency of the order to show cause printing cannot be commenced at Dixie Color Printing Corporation with printing presses, machinery, equipment and any other parts shipped from or by International Color at any time since June 1, 1955. In other words,

on the face of the order it is only dealing with preserving
653 this thing called International Color Printing Company, nothing else. Now, our order to show cause also annexes thereto affidavits of Mr. Hornaday and Mr. Smith. I make this clear to Your Honor, to point out that while you can say our order to show cause was predicated upon two things; one, the

preservation of International, and second the irreparable injury done to Southern Color Prints. In the main, our order was based upon one thing, to preserve International Color Printing Company under the concept set forth in this order to show cause. It makes no difference whether you take forty per cent of the assets away or a hairpin out of the company, that company must remain the way it was when it was acquired June 1,

654 1955.

The COURT: Well, did you contemplate in any way that Southern Colored was going to gain any advantage as a result of the order?

Mr. FELDMAN: We were hoping they were going to get more business. Let me go on.

The COURT: From Wilkes-Barre?

Mr. FELDMAN: If possible, under the competition, yes. That is the whole concept of the Government's case. Now, going on to what Mr. Jack Hornaday and Southern Colored Printing, I would like to give you background as to what happened over there. This Southern Colored Printing corporation was founded in 1948 and around 1955 and 1956, they were doing in one week something like 776,000, 4's. Now, as the market goes that is a very, very small amount. They, at the time, did not have a sales-

655 man, so they went out and got someone from King Features and while it is a separate corporate relationship between Southern Colored Printing and the sales agencies they do work together. Now, Mr. Hornaday became in effect the operating sales agent for Southern Colored Printing. Now, in this order to show cause, when it was signed by Your Honor, we had information that certain predatory practices were going on in the Southeast. These consisted mainly of so-called tie-in sales, a sale where when you want to sell color print you sell the feature rights and as a result, by control of the feature rights you are able to control the sale of supplements. This, to any extent, only went on to the syndicates. In addition there was an absorption of transportation rates by the people who had the economic power in the area. They also

quoted theoretical transportation rates and since transportation is such an important factor in getting business here, the ability to do so usually meant acquiring the order. Now, in the case of one trucker, and trucking is an important thing in that area, there is evidence in our record that International told a particular trucker not to do any business with Southern Color Print. This was the background. The

company had failed to expand and most businesses, when first commencing reach a point where they go forward or completely out of business. Now, when we received information at least of such a nature that we could present to a court as to what was happening with the assets of International and that such assets were being used to build Sylacauga, we then went to Southern Colored Printing and I would like the record to show they did not come to us, but we went to them and asked to solicit information and ascertain what the facts were.

Now, they 657 in turn prepared affidavits and these affidavits point out that irreparable injury would be done to them in the event the Sylacauga plant was opened. To begin with they had certain contracts about to expire. Now, if a company can't get any business and is going to lose what it has, obviously that is an irreparable injury and they had the right to assume that the predatory practice was going to continue, in fact, increased, because with the opening of Sylacauga it could be used to completely put them out of business. That was the story then in 1959, they had only one account, in 1960, not any, and in 1961, one account. The company had not gone ahead. In regard to the remarks of hiring Jack Hornaday from King Features, the

record shows, that is the deposition today, that King 658 Features was controlled by one individual sales manager, Mr. Nicht. He set the policy and everyone there

just implemented what he said. In cases of this type that we are dealing with, there is no moral turpitude involved, the man was told to do it and he did it. We are not here to pass judgment on what Mr. Jack Hornaday did when he left King Features. The fact is, he left and went out and that is what he found. In fact, when the people come to the Department of Justice, it is only when they are hurt that they feel this injustice. The fact that there is a practice that they participated in never occurred to them and it has no bearing at all to this case. Thereafter, Your Honor signed this order to show cause, then we had a period in which we attempted to negotiate and settle the entire motion. Now, information has developed that since April, 1961, they increased their business and so after 659 the deposition—

The COURT: You mean Southern?

Mr. FELDMAN: That is right. And in the amount as stated by Mr. Raichle; no question about that. So what I did, I attempted to conduct an independent investigation and find out who had been on this business, what happened here. In other

words, anyone can say, maybe they increased it, why not give them the benefit of the doubt and say they went out and actively competed for the business. The evidence shows Mr. Hornaday although in Scarsborough, New York, spent half a year going out and continually calling on accounts. In other words, he did a job and the question is to find out what type of job did he do.

Well, I got in touch with six—with five of the newspapers involved. Now, this is attached to our affidavit which I will submit when I am through, Your Honor.

The COURT: What was the question, whether he took a copy of my order when seeking customers, to show what the restraint was?

Mr. FELDMAN: No; the evidence shows, Your Honor, that the whole trade knew about this.

The COURT: Was he asked whether he took copies of it as part of the salesmanship?

Mr. FELDMAN: No. I asked who competed for the accounts. That is the first thing I wanted to know, who are the people who competed. That is the normal inquiry. We go to one particular one, Greensboro News Company, located in Greensboro, North Carolina. Excuse me, may I submit this? Now, in Greensboro at least the publishers owned two newspapers and for years they had been doing business with a company in Waterbury,

Connecticut, called Eastern. As the record shows there, 661 Mr. Hornaday came in and bid on the account. The individual, that is the publisher, says that prior to that time he was called upon by someone from King Features and thereafter King Features never submitted a bid. Is there anything wrong with a man going in and getting business under those circumstances? Obviously not. If people come in court and complain there is an economic advantage upon them, the big point is, what did you do to beat the competition in those accounts, that is, the accounts referred to in that affidavit. Is there any evidence that Greater Buffalo, at any time, ever solicited the business? Yet they are one of the parties coming in here and saying that Southern Colored Print has an economic advantage because of the order of June 22, 1962. Now,

662 in passing I would like to remark as to what this case is not about. First of all, all the business of taking the deposition of Mr. Hornaday and how it came about, that is just window dressing. The fact is, the deposition was taken. As far as the Government is concerned, that entire transaction

took place between Mr. Hornaday, his lawyers and defense counsel. The deposition took place in New York and the motions and determinations of the motions were taken in New York, so that is not before this Court at all. The only thing before this Court is the content of that deposition and nothing else. Now, I would also like to point out with respect to remind the Court that while the defendants come in with certain projections, we have indicated that the defendants would be able to open up the Sylacauga operation with 4's of 5,156,888.

663 and that would include not the six accounts they refer to, but an additional account, namely the Louisville Courier Journal and there is then another account, the Memphis Commercial Appeal and since July, 1961, that is being printed in Lufkin, but we would consent to any modification of the order to permit them to take it from Lufkin and put it in Sylacauga. Now, the next point raised by the defendants is the fact that if Sylacauga opens up all the newspapers in the South are going to get the benefits of the transportation. Well, we made an inquiry as to what takes place in the transportation. First of all, there are generally what are called general commodity common carriers. That means that these carriers are what is

all the common law concept of the common carrier; any-
664 one can go to them at any particular time and they have published prices available to all. Sometime in 1948, there was a judicial determination by the Third Circuit that color comic supplements could under the Interstate Commerce Commission Act be considered newspapers. Now, as far as the shipment of supplements, that had a dramatic effect, because newspapers under the Interstate Commerce Commission Act are exempt from any regulations whatsoever, and as a result, while we have all common carriers filing their schedules with the Interstate Commerce Commission, it means that someone who may have a certificate from the Commission to ship a particular commodity, can on the return, or when going, on his truck or any other transportation form, when it is empty, make

any arrangements he wants and ship and set the price
665 or anything else also that line with the shipper and when he does that he is not prohibited by law from deviating from one customer to another as to price or the conditions under which he is going to ship. That is an important factor in this instance and that means if someone has—someone is a large shipper and has supplements or colored comic supplements go-

ing through a particular area and servicing many newspapers there, such a shipper, if he has a trucker, could generally come out ahead of the game in transportation rates. Such rates would not be made available to the competitors of that particular shipment. There is one other fact in that connection. Generally these companies which offer the special rates, they lack consistency. In other words, you may have them for the first six months and today or tomorrow they may be lower
 666 and/or a year from now changed. In other words, when a rate change takes place, they need not go to the Interstate Commerce Commission and ask for the change to be made, because before the Commission can make a change, the public can come in and the shipper and the competitors can come in and be heard. We urge to this Court in considering problems of transportation, it should be the transportation rates that are made available by the general common carriers to all shippers. Now, generally when such rates are quoted, the

better rate is given to the person who has the geographic
 667 advantage. And so when we have a lot of these rates quoted, they are not realistic rates over a long period of time. There is one other thought I would like to talk about, Your Honor, and that is in regard to the particular order here. Now the order that now exists does not direct Greater Buffalo to commence printing operations at Sylacauga. All it says, you are permitted if you want to and if you comply with certain conditions. Now we maintain that the paramount problem in this case is the keeping of International, and keeping the assets compact and the way they were as near as possible as of June 1, 1955.

The COURT: What do you mean by "keeping International"? You mean the survival of it?

Mr. FELDMAN: Survival of it and keeping the assets separate and distinct and not removing anything and whether
 668 you remove as the defendants urged at the last hearing, assets which would amount to a forty percent loss in profit or whether you take out five percent as far as the Government is concerned, it makes no difference, that company has to remain the way it is and continue to function. Now the answer as far as Sylacauga is concerned and the answer as far as the defendants are concerned is to urge this Court to have a speedy trial and thereby determine and how the case comes to an end because, in any event, once the case comes to an end Sylacauga could open. It may open under the leadership of the

defendants here, it may open under someone else and at least
International can then operate alone or as part of Greater
669 Buffalo, but that resolves the whole problem. Now this
business of coming in and quibbling about three million
fours, five million fours, or six million fours doesn't add too
much as far as our case is concerned.

The COURT: How long do you think this case would take at trial? What is your estimate?

Mr. FELDMAN: I would say the Government could put it in
in about a week, that is about all, and a lot would depend on the
pretrial procedure beforehand. In other words it may only take
a couple of days and we can have all the documents out of the
way, and I might add the Government is willing to sit down
with defense counsel morning, afternoon or night and work out
something along those lines. Now coming to the next point, that
is these projections here, and as to the talk that we gave
670 the projections to the defendant and so forth—first of
all—excuse me, Your Honor, I am sorry, gave to com-
petitors of defendants—now after the first projection which was
given me. I don't think Your Honor saw it all at the hearing in
Your Honor's chambers on October 29th, only this set of figures
was given to Your Honor with the motion papers, and they
later appeared in the motion papers. These figures were not
given to the Government under any protective order. Your
Honor asked us at the particular time to take these figures and
come up with an answer as to whether they are realistic, and
whether they have any validity. Now I personally don't know
that much about the color comic supplement printing industry
and the only people I am able to go to are the people in
671 the industry, and I never assumed for one minute that
anything set forth in this projected figure could by any
figment of imagination be considered confidential. In fact our
evidence will show from people coming in, there just isn't
enough information to make an intelligent guess or estimate as
to whether the estimate set forth here would have any validity
at all. Now as to the projected figures which are set forth here
we have oral testimony in the form of people who are ready to
testify today, Your Honor. At the present time we have no
objection to calling our witnesses.

Mr. RAICHLE: I would like to proceed.

Mr. FELDMAN: Excuse me, I said we have no objection. You
may proceed first or last, I am just saying it for the
672 record.

Mr. RAICHLE: I don't conceive this to be the proper time to argue but I would like to make the record complete, if Your Honor would indulge us in argument.

I cannot permit Mr. Feldman's statements to go unchallenged here. He talks about predatory acts. There is not a single predatory act that anybody could point to or charge against any of the defendants I represent. That is the anomalous part of this thing. The predatory acts charged against others—no relief is sought against anybody but my defendants, nobody suffered except my defendants. The statement about our denuding International Color Print plant is so wide of the mark. Let me refresh Your Honor's recollection. Greater Buffalo Press conceived the Sylacauga venture. A press was bought from a Baltimore newspaper owned by Hearst. An identical press was purchased by Southern Color Printing Company from the same source at or about the same time. What is so venal is the fact that Greater Buffalo Press acquired an instrumentality, a piece of machinery, a press? True, International Color Printing employees did some work on it—they could have taken it to a machine shop somewhere else and done it. We moved it to Sylacauga to print. They moved the press from the same source, of the same type, down to their place in the south for Southern Color Printing Company. We don't need—no one needs that drastic remedy. I listened in vain for a 'Why', a good reason it should be continued; for this talk about leaving the plant exactly as it is. This Court is not

in a position to direct that the press be returned to International Color Printing Company, if there is any importance about the whereabouts of the press. It is in the record, and we will develop it in argument and briefs to Your Honor. There is nothing to this proposition at all. It was our press, bought at our expense, paid for by us, by the defendants I represent; not by International, other than International Color Printing, and sent down there, and remained there, deteriorating at great expense. For Government counsel to stand here and say, "Let us not quibble over a few million fours"; we are not quibbling over a few million fours, we are in a Court of law asking relief against something which is, I respectfully submit to Your Honor, inequitable in this operation, not so foreseen by Your Honor. In the light of changed circumstances, ask Your Honor to amend or to vacate it. We are not quibbling over fours, we are

arguing over principles. We are seeking survival. In relationship to the budget of the Department of Justice, I suppose this \$20,000.00 a month loss we have suffered for two years is not important, but it is important to us. I don't know how long we can continue to do it. To argue here to Your Honor that we should be subjected to that and tell Your Honor that he is ready to go to trial—Your Honor was very considerate of both of us, you told us there was not any opportunity to try this case in view of the crowded condition of this calendar. I haven't made any grandstand offer. I will tell you now that we are ready to try the case tomorrow. May I proceed?

The COURT:

676 Mr. RAICHLE: I would like to first offer the—

The COURT: Frankly, I am giving this serious consideration. If I can work it out for very prompt trial, I will. I cannot do it from the bench now.

Mr. RAICHLE: May I have Mr. Halpern read the answers, I will read the questions? I might say that Mr. Hornaday made certain corrections. I don't regard any of them as important. He is entitled to have his corrections made; and in two complete copies I have made all the corrections. I submit to Your Honor the list of his corrections. I assume you have them, Mr. Feldman?

Mr. FELDMAN: No, I don't have them.

Mr. RAICHLE: Well, they are mostly inconsequential improvements of wording or something. I don't believe there is anything changed in substance.

677 Mr. FELDMAN: Excuse me, has the original been filed with the Clerk?

Mr. RAICHLE: I consider this a filing of it right here.

The COURT: I see no reason to have the reporter take this down. However, I would like it copied into the record.

Mr. RAICHLE: Yes.

The COURT: There is no reason for you to take this down. If, on the other hand, there is any argument to be had, you will take it down.

Mr. RAICHLE: I am going to read the entire direct examination. You can read the cross examination?

Mr. FELDMAN: All right, fine.

Mr. RAICHLE: In other words, we don't have the problem of selective portions of it. This is the deposition of Jack R. Hornaday, taken on behalf of these moving defendants, on

Thursday, December 6, 1962, at the office of Mr. Hornaday's
counsel. Shall we proceed?

The COURT: Yes.

[Caption Omitted in Printing]

678 "Deposition of JACK R. HORNADAY, taken on behalf
of the defendants Greater Buffalo Press, Incorporated; International Color Printing Corporation and Dixie Color Printing Corporation, pursuant to subpoena, at the offices of Gilbert & Segall, Esqs., 405 Park Avenue, New York, New York, on Thursday, December 6, 1962, at ten o'clock in the forenoon, before George Abraham, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

679 "Appearances: *Raymond M. Carlson, Esq.*, Attorney for the Plaintiff, c/o The United States Attorney, U.S. Court House, Buffalo, New York. By: *Elliott H. Feldman, Esq.*, of Counsel.

Raichle, Moore, Banning & Weiss, Esqs., Attorneys for Defendants Greater Buffalo Press, Incorporated; International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, 10 Lafayette Square, Buffalo 3, New York. By: *Frank G. Raichle, Esq.*, of Counsel.

"*Gallop, Climenko & Gould, Esqs.*, Attorneys for The Hearst Corporation, 360 Lexington Avenue, New York, New York. By: *Jesse Climenko, Esq.*, and *Leo Schwartz, Esq.*, of Counsel.

680 "Gilbert & Segall, Esqs., Attorneys for the Witness, 405 Park Avenue, New York, New York. By: *Robert Layton, Esq.*, and *Robert E. Young, Esq.*, of Counsel.

Baker, Hostetler & Patterson, Esqs., Attorneys for Defendant Newspaper Enterprise Association, Inc., 1956 Union Commerce Building, Cleveland 14, Ohio. By: *Richard F. Stevens, Esq.*, of Counsel.

Lord, Day & Lord, Esqs., Attorneys for King Features, 25 Broadway, New York, New York. By: *Robert Haynes, Esq.*, of Counsel.

681 "JACK R. HORNADY, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY

Mr. RAICHLE:

"Q. Where do you live, Mr. Hornaday?

"A. I live in Scarborough, New York, about thirty miles up the Hudson from the City.

"Q. That is your residence?

"A. That is my residence, yes.

"Q. You are a resident of Scarborough?

"A. Yes, sir.

"Q. In the State of New York?

"A. That's right.

"Q. You are the same Jack R. Hornady who testified a year or so ago in this same suit?

"A. About a year and a half ago I gave a deposition.

"Q. You have been asked to produce some documents here. They are outlined in the subpoena duces tecum. Do you have those documents?

"A. My counsel has.

"Mr. LAYTON: I have those documents on behalf of Mr. Hornady. Would you like them at the present time?

Mr. RAICHLE: Would you identify them for me?

682 "Mr. LAYTON: Certainly.

"Mr. RAICHLE: Then I would like to have them marked, if I may.

"Mr. LAYTON: Pursuant to the subpoena, I have produced six sets of documents, the first of which is a photocopy of an agreement dated August 27, 1962, between Atlantic Features and Printing, Incorporated and Beckley Newspaper Corporation, and attached thereto are copies and originals, of course in connection with that agreement as called for under the subpoena.

"Mr. FELDMAN: How many copies are there?

"Mr. LAYTON: The number of sheets?

"Mr. FELDMAN: Yes, the number of sheets.

"Mr. LAYTON: That would be five sheets in addition to the agreement, a total of six sheets.

"Mr. RAICHLE: Those sheets are the correspondence to which you refer. (Photocopy of agreement dated August 27, 1962, between Atlantic Features and Printing, Incorporated and Beckley Newspaper Corporation, with five sheets attached thereto, was marked Defendants' Exhibit A for identification, as of this date.)

683 "Mr. LAYTON: Second, a photocopy of an agreement dated November 28, 1961 between Atlantic Features and Printing, Incorporated and the Greensboro News Company, and also

part of the second, photocopy of agreement dated November 28, 1961 between the Atlantic Features and Printing, Incorporated and the Greensboro News Company, and attached thereto correspondence in connection therewith as requested under the subpoena consisting of six sheets.

"(Photocopy of agreement dated November 28, 1961 between Atlantic Features and Printing, Inc., and the
684 Greensboro News Company, and attached documents as above referred to, was marked Defendants' Exhibit B for identification, as of this date.)

"Mr. LAYTON: Six sheets in addition to the two photocopies.

"Third, a photocopy of an agreement dated June 11, 1962 between Atlantic Features and Printing, Inc. and the Macon Telegraph Publishing Company, along with copies and originals of correspondence as called for under the subpoena totaling ten sheets, and a page of newspaper.

"(Photocopy of agreement dated June 11, 1962, between Atlantic Features and Printing, Inc. and the Macon Telegraph Publishing Company, and attached documents, was marked Defendants' Exhibit C for identification as of this date.)

685 "Mr. LAYTON: Fourth, a photocopy of an agreement dated November 27, 1961, between Atlantic Features and Printing, Inc. and Newspaper Agency Corporation, along with correspondence in connection with that agreement as called for by the subpoena, consisting of thirteen sheets.

"(Photocopy of agreement dated November 27, 1961, between Atlantic Features and Printing, Inc. and Newspaper Agency Corporation, and attached documents, was marked Defendants' Exhibit D for identification, as of this date.)

"Mr. LAYTON: And last a photocopy of an agreement dated November 30, 1962, between Atlantic Features and
686 Printing, Inc. and the Norfolk-Portsmouth Newspapers, Inc., and attached thereto correspondence as called for under the subpoena consisting of two sheets.

"(Photocopy of agreement dated November 30, 1962, between Atlantic Features and Printing, Inc. and the Norfolk-Portsmouth Newspapers, Inc., and attached documents, was marked Defendants' Exhibit E for identification.)

"Mr. LAYTON: You will notice that there are excised from the agreements certain portions of the agreements concerning price and the duration of the term of the agreement pursuant to the position taken by the attorneys for the witness and con-

vveyed to counsel for the moving defendants herein as constituting information, the disclosure of which would constitute a competitive disadvantage to Atlantic Features and Printing, Inc., and which we are prepared to secure a protective order concerning, and which counsel for defendants has been kind enough to state that it will not be necessary at the present time.

687 "Those are all the documents which I have to produce.

By Mr. RAICHLE:

"Q. Mr. Hornaday, the subpoena reads in part that you bring with you any and all correspondence, documents and contracts relating to the sale of comic features or the printing of colored comic features between Jack R. Hornaday, Southern Printing Corporation or Atlantic Printing, Inc., or any association of newspapers beginning April 1961 to date.

688 "Do these documents just produced by your counsel and identified by him in your presence constitute all of the documents comprehended by that passage from that subpoena I just read to you?

"A. They comprehend all the documents in the possession of Atlantic Features or Southern Color Print having to do with that.

"Southern Color Print and Atlantic do not sell features.

"Q. Are there other contracts within the time which is pertinent here, April 1961 to date, which have not been produced relating to the features or the printing features for any of these newspapers by Southern Colored Printing?

"A. No, sir. Southern Color Print and Atlantic, as I have said, do not sell any features and do not have any files about features. They are only concerned with comic printing.

"I do sell, as the record shows, features for the Hall Syndicate, but I have no correspondence on that. I don't keep that correspondence.

"Q. There is no correspondence comprehended by the passage of the subpoena which I just read to you which is in existence and has not been produced?

"A. Not to my knowledge, sir.

689 "Mr. LAYTON: May I state for the record, the correspondence which was turned over to me by Mr. Hornaday has all been produced with the exception of those letters which I considered gave the exact information which was excised from the contract itself regarding price and duration of the term of the agreement.

"That is the only correspondence which has not been produced.

"Mr. RAICHLE: We are reserving our rights in this situation, but I am not initially quarreling with you about the excised portion of the documents.

By Mr. RAICHLE:

"Q. You heard your counsel say that it would be a competitive disadvantage, to use his words, to disclose the information which has been excised. Do you agree with that?

"A. Yes, sir.

"Q. Do you have in your possession and have you acquired such information pertaining to your competitors prices and information?

600 "A. That is a double barreled question.

"Q. Answer it one barrel at a time.

Mr. LAYTON: Read the question back.

(The pending question was read back by the reporter.)

"Mr. LAYTON: Are you referring to this particular period of time from April 1961 to date?

"Mr. RAICHLE: Let's take that first.

"The WITNESS: There have been from time to time occasional imparting to me by some newspapers of what rates they were paying.

"That is a very small percentage. Most publishers tell you that they don't give you the price that they are paying to another printer and they don't give the other printer the price they are paying you.

By Mr. RAICHLE:

691 "Q. Has the Department of Justice or any representative of the Department of Justice conveyed any information to you?

"A. You mean any information as to prices?

"Mr. LAYTON: You mean in writing, orally?

"Q. Orally or in writing pertaining to the price, terms, conditions of the sale of printing by your competitors, any of your competitors?

"A. No, sir; except that in the records of this trial—I mean of my previous deposition one of the defendants' exhibits having to do with the New Orleans contract presented by the defendant, and I did see that.

"Q. Have you looked at any papers in the Department of Justice produced by the defendants in this case?

"A. I looked at some figures, but I didn't understand them, that the Department of Justice had about cost of printing in Sylacauga.

"Q. When was this?

"A. Last week.

"Q. What day?

"A. I believe it was Wednesday, sir; it might have been Tuesday.

"Q. It was either Tuesday or Wednesday of last week?

"A. Yes, sir.

692 "Q. Was it the same day that your counsel was appearing in the Federal District Court here in the Southern District of New York?

"A. I believe he was appearing that day, yes, sir.

"Q. Making the representations as to your physical condition?

"A. That's right.

"Q. How long were you at the Department of Justice?

"A. Two, three hours.

"Q. Whom did you see there?

"A. I saw Mr. Feldman.

"Q. Did you go over with Mr. Feldman the motion papers in this application?

"A. No, sir. I read my deposition, my previous deposition which I did not have with me at the time. That is the reason I went to Washington to look at this.

"Q. In addition to that you looked at the two projections, columns 1 and 2, did you not?

"A. I looked at a sheet. I don't think I even read it. I saw a sheet there having to do with cost figures.

"Q. Projected cost of operations at Sylacauga?

"Mr. LAYTON: Is that a question?

"Q. Isn't that so?

693 "A. I think that is what it was.

"Mr. RAICHLE: So often the tone of voice implies a question.

"Q. Did you discuss those two columns with Mr. Feldman?

"A. No, sir.

"Q. Did he exhibit it to you?

"A. Well, he must have handed them to me or showed them to me, or somebody around there must have.

"Q. Who else was there? You say "somebody".

"A. Mr. Smith.

"Q. What Mr. Smith?

"A. Mr. Robert D. Smith of Southern Color Print Corporation.

"Q. You were both there?

"A. He was there; yes, sir.

"Q. When did you get to Washington, a day before?

"A. Let me see if I can't think of the exact day, sir.

"Q. It would be helpful.

"A. When was my deposition here scheduled? Was it last Thursday?

"Q. Your deposition was scheduled for last week.

"A. That was the original schedule, yes.

694 "Mr. LAYTON: Wednesday, November 28th.

The WITNESS: Then it was Tuesday, it was a day before.

"Q. How did you happen to go the Department of Justice?

"A. Because I wanted to see my deposition.

"Q. After you got the subpoena?

"A. I never got the subpoena.

"Q. How did you know what to bring here?

"A. My lawyer told me that there was such subpoena.

"Q. You say you have never seen the subpoena?

"A. I didn't say I never; I never had gotten it to that time.

I have seen it in my lawyer's office when I came here.

"Q. Was it at the Department of Justice?

"A. I don't remember.

"Q. Did you discuss the question of whether you had been subpoenaed or not with the Department of Justice?

"A. Yes.

"Q. With Mr. Feldman?

"A. Yes, sir.

"Q. When did you first know that a subpoena was out for you?

695 "Mr. LAYTON: I have been very tolerant up to this point, sir. I think that we are going a bit astray, and if you have questions you want to ask concerning your motion, in the main, why go ahead. I don't think that we are going to open the entire matter of this subpoena up again at this time, are we?

"Mr. RAICHLE: I am as pleasantly and courteously as I know how.

"Mr. LAYTON: I can inform you as courteously and pleasantly as I can at the present time that I will direct the witness not to answer questions concerning the serving of the subpoena.

"If you want to make an issue of that, I am perfectly prepared to do so.

"By Mr. RAICHLE:

"Q. Mr. Witness, do I understand you are not going to answer any questions pertaining to the service of this subpoena?

696 "A. I won't answer any questions that my counsel advises me not to answer, sir.

"Q. If he advised you not to answer questions concerning the service of this subpoena, then you won't answer them; is that it?

"A. That is correct, sir.

"Q. I will ask and see what happens. When did you first know that the Greater Buffalo Press was applying for a modification of the Court's order of June 22, 1962?

"Mr. LAYTON: At this point I would like to make a statement for the record and say that the matter of the service, or the purported service of this subpoena, was a matter handled by counsel for the witness. It was subject to a Court adjudication.

"Mr. RAICHLE: And the court found that the subpoena had been served upon him.

"Mr. LAYTON: If you will permit me to finish my statement, I'd be glad to let you finish yours.

697 "The Court in its wisdom found that the subpoena had been properly served. Subsequent to that time, a later motion for protective order was made which I signed. It is still subjudicating and the witness has appeared here today voluntarily, is presently here pursuant to agreement between respective counsel, and we are entirely willing to make Mr. Hornaday available subject to the state condition of his health, in cooperation with the moving defendants.

"However, if this is going to be broadened into a re-inquiry into a matter that was determined by the Court sitting in the Southern District of New York, I will direct the witness not to answer the questions and we will have another Court determine that at a later time.

698 "I further state that Mr. Hornady, pursuant to agreement, is going to testify for the two hours each day and as long thereafter as the state of his health permits, subject to

the rights of counsel for the defendant to have Mr. Hornady examined by a doctor of their own choosing in New York City. "If that agreement cannot be adhered to, I understand, we then are back in the hands of the Court in the Southern District of New York.

"I am finished.

"By Mr. RAICHLE:

"Q. Mr. Hornady, the condition of your health permitted you to go to the Department of Justice on the very day that you were directed to be here to give your testimony; isn't that true?

"A. Mr. Raichle—

"Q. Isn't that true, sir?

"A. That is true, yes.

"Q. You spent several hours there, as you have told

699 us
"Mr. LAYTON: I would like the witness to be able to finish his answer.

"Mr. RAICHLE: Please direct him to give a responsive answer.

"Mr. LAYTON: He answered it 'Yes, but'. I think he should be able to finish the 'but'.

"Q. How long were you at the Department of Justice?

"A. Three or four hours sitting in the library reading my previous deposition, which required no strain whatever.

"Q. Where were you when you were looking at the projections of the cost of operation of the Sylacauga plant? Was that in the library too?

"A. No, that was not in the library. I think that was either in Mr. Feldman's office or outside of his office, and that it was shown to me by Mr. Smith, on my recollection.

"Q. Was Mr. Feldman present when Mr. Smith showed it to you?

"A. I am not sure of that. He was in and out of the area where Mr. Smith and I were.

700 "Q. So that Mr. Smith of Southern Colorprint Company had these projections which we had furnished to the Department in connection with our application?

"A. That is correct, sir.

"Q. You and Mr. Smith discussed them, did you?

"A. Yes, sir.

"Q. Were you generally in agreement with what the projections showed?

"Mr. LAYTON: I will object to that question. I don't think we want conclusions or opinions of the witness.

"Mr. RAICHLE: That is a fact. I press that question.

"A. As I said a while ago, what Mr. Smith said to me about these figures went off my back like water off a duck's back. I was not concerned with them. I wasn't feeling well and I was anxious to get that deposition read. I thought it might be my last opportunity to look at the deposition before this deposition.

701 "Q. Do you know how Mr. Smith happened to have our projections with him?

"Mr. LAYTON: Do you want him to guess?

"Mr. RAICHLE: I asked him if he knew.

"A. I think Mr. Feldman gave them to him.

"Q. Did he give them to him in your presence?

"A. No.

"Q. Mr. Feldman and Mr. Smith discussed the projections in your presence?

"A. I think some aspect of them, sir.

"Q. What aspect?

"A. I have forgotten, sir. I wasn't paying much attention, as I said. That was not part of my—

"Q. It was made known to you, was it not, what the purpose of this application on the part of the Defendant Greater Buffalo Press and Dixie Color Printing was?

"A. You mean that they wanted to amend the motion that the Court—

"Q. Amend the Court's order.

"A. Yes, I knew that.

"Q. Who told you that?

"A. I first heard about it from Mr. Smith.

"Q. When? On what day?

"A. I don't remember, but it was when I was at home recuperating after my operation.

702 "Q. Prior to the 10th of November?

"Mr. LAYTON: Of 1962?

"Mr. RAICHLE: Yes.

"Q. The 10th is the day on which we claim the subpoena was served and that is the date on which the Court found the subpoena was served.

"A. Then it was prior, sir, if that date is correct.

"Q. How long before?

"A. I can't remember, sir.

"Q. A few days?

"A. Probably.

"Q. Did Mr. Smith call you on the telephone to tell you?
"A. He either called me or I called him. We were in frequent telephone communication.

"Q. But it was from Mr. Smith on the occasion of a telephone conversation, initiated by him or by you, that he told you that Greater Buffalo Press and these defendants were making this motion?

"A. To the best of my recollection, sir.

"Q. He told you the object of the motion, as you put
703 it, to amend the Court's order?

"A. That's right.

"Q. That is the order imposing restraints upon the defendants or certain of them?

"Mr. LAYTON: It is the Court order.

"Q. You are familiar with the order?

"A. Yes, I was familiar with it at the time it was issued.

"Q. You have discussed that order with various of your prospective customers, haven't you?

"Mr. LAYTON: I object to the form of that question.

"Q. In the solicitation of business, you have referred to that order?

"A. I don't think so.

"Mr. LAYTON: I suggest that you rephrase the question. I prefer not having testimony put into the witness' mouth. Just ask the question.

"Mr. RAICHLE: What would you like me to ask him?

"Mr. FELDMAN: Suppose we have the question read back.

"(The pending question was read by the reporter.)

704 "Mr. FELDMAN: I am going to object to the form of that. There are two parts to it; one, whether he discussed it, and two, whether in the solicitation.

"There has been no testimony from the witness whether he ever discussed it with his competitors, to begin with.

"Mr. RAICHLE: I didn't say with his competitors.

"Mr. FELDMAN: I mean with customers.

"Mr. LAYTON: Why don't you break it down and take it one at a time?

"Mr. RAICHLE: Yes, I am quite unhurried about it.

"By Mr. RAICHLE:

"Q. During the period of the pendency of this lawsuit, which was started in January 1961, you have been actively soliciting the printing from various newspapers, haven't you?

"A. Yes, sir.

"Q. In the various states mentioned in the order?

"A. That's right.

705 "Q. You have been continually soliciting such business, have you not?

"A. Yes, sir.

"Q. You are continuing to do so today?

"A. Yes, sir.

"Q. And you have been—

"A. May I make this reservation, that for a period consisting of August, September, October and November, I was either on vacation or my wife was sick or I was recuperating from an operation. During that period I didn't solicit any printing business.

"Q. Except for some overlying circumstances, you have continued to solicit?

"A. Yes.

"Q. Except for those circumstances, you have continually solicited business in those states mentioned in the order from the various newspapers therein located; correct?

"A. Since the order was issued, sir, my period of soliciting has been a great deal less than in the period when I was not soliciting business.

"Q. Would you explain what you mean by that?

706 "A. I mean that the order was issued in June. In July I was in New England and New York State in behalf of the Hall Syndicate, which had nothing to do with printing. In August I was at home on my vacation. In November I was in Virginia from two to three weeks waiting for my wife to recover from a major operation she had in November.

"Mr. LAYTON: Do you mean in September?

"The WITNESS: I mean September, I'm sorry. Then after returning from Virginia, I was in New York until the last part of November, at which time I was operated on, and at home for several weeks.

"Since then I have made one trip to the southern area which is concerned with this matter.

"Q. Excuse me for interrupting.

"By 'the matter', you mean the matter of solicitation?

"A. No, the matter of this order that this deposition covers.

707 "I made one trip to the South, most of which time I spent in my office at Newport News, Virginia. But en route down there I called briefly on several newspapers in behalf of the Hall Syndicate. I called on one newspaper in Virginia about printing their coming supplements.

I called on another newspaper in Virginia subsequently about printing the comic supplement.

"Actually, since this order was made, I have called on those two newspapers and I may have called on Beckley, West Virginia.

"I have forgotten exactly when I flew from New York down to Beckley, West Virginia. I think it was after the order.

"Q. Let's take the Beckley incident. That is covered by one of the documents just marked in evidence?

"A. Yes.

"Mr. LAYTON: Before you do that—I believe you may have said in November in connection with the operation of your wife.

"The WITNESS: No, that was September.

"Q. What you are getting at there, if I understand you, is that your solicitation efforts were interrupted by these 708 series of circumstances?

"A. That's right, they were almost completely obliterated.

"Q. But despite the interruption, you did the best you could in the way of solicitations, didn't you?

"A. I called on, sir, three newspapers concerning comic supplement printing.

"Q. Let's go to the Beckley incident.

"A. Yes, sir.

"Q. Where is the Beckley paper?

"A. That is in Beckley, West Virginia, which is about fifty to seventy miles south of Charleston, West Virginia.

"Q. When did you get their business? You can look at anything you want to refresh your recollection.

"(Witness refers to document.)

"A. Contract is dated August 27th.

"Q. Of what year?

"A. Of 1962, but I was down there a couple of weeks before that date, which would mean about August 10th.

"Q. Who previously did the printing that you got 709 under that contract?

"A. International Color Printing at Wilkes Barre,

Pennsylvania.

"Q. How did you get the business?

"A. I got the business by quoting a price which was favorable and by finding out that the newspaper could have the supplements hauled from Newport News at a good deal lower cost than they were hauled from Wilkes Barre, Pennsylvania.

"Q. You got it on the basis of price then?

"A. Yes.

"Q. One of the elements of price was the transportation charge?

"A. That is correct, sir.

"Q. The savings you were able to effect for them?

"A. That's right, yes, sir.

"Q. Could we cut through quite a lot of minutise by saying that printing is sold largely on the basis of price?

"A. Almost altogether, sir.

"Q. One of the important elements in the make-up of the price, of course, is transportation charges?

"A. That is correct.

710 "Q. The geographic locations of a plant in all instances is of some importance?

"A. Yes, indeed.

"Q. That transportation charge or the diminution of it represents a saving to the newspaper?

"A. That's correct; yes, sir.

"Q. Over the price he would have to pay if it was transported from some place farther away?

"A. I say yes, with qualifications; that some printers have made what is known as delivered deals, that they just charge a price FOB the newspaper. Where the newspaper pays its own transportation, when they can get their comics transported cheaper, of course, it is savings for the newspaper.

"Q. Since price is the important element in the placing of business and from your point of view, getting the business—I am speaking of the printing of colored comic sections—I suppose price must be the principal subject of discussion when you negotiate with the newspaper?

"A. No question of that, sir.

"Q. No question but that is true?

711 "A. It is the main thing that is said, It may not require more time than other discussions, but it is the main thing that I have found most of the newspaper executives are interested in.

"Q. Did you discuss with Mr. Feldman—and I am not picking on you, Mr. Feldman—this business which you were obtaining in this—

"A. Excuse me. Will you start the question again?

"Q. Did you discuss with Mr. Feldman the business which you were acquiring from International Color—

712 "Printing from time to time or at any time?"

"A. I haven't discussed with Mr. Feldman any of this business until this motion for an amendment came up and he asked me, 'Did you get this additional business?'

And then subsequently I told him about Norfolk yesterday.

"Q. Tell us about Norfolk.

"A. It is very simple; that I signed a contract with Norfolk, which is in evidence, last Friday, whereby I was to start printing their comic supplements next March.

"Q. From whom did you take that business?

"A. Wilkes Barre International Color were doing this printing, but King Features held the contract.

"Q. Did you get that on the basis of price?

"A. Oh, yes.

"Q. Transportation saving?

"A. Yes. It is right there at Newport News, as Mr. Moore said, in my previous deposition during which he taunted me twice for not having Norfolk printed at our plant. He referred to Norfolk as being in the backyard of Newport News.

713 "Q. Was that offensive to you?

"A. No, it wasn't offensive, but he tried to make it a taunt, let's say, apparently.

"Q. Will you just take them one by one in your own way and you can look at any source which you need to refresh your recollection and tell us from January 1, 1961, to date, what business you have acquired for Southern Colorprinting Company?

I'd be grateful if you can give it to me in terms of units of weekly fours. That seems to be the way we have been discussing this thing.

"A. This subpoena asking information from April 1st. You just asked from January 1, 1961. I have not searched my records or my memory for that period between January 1st and April 1st.

"Q. Take April 1st.

"A. Since that time—

"Q. Let's have it clear on the record what we are talking about. April 1, 1961 to date.

"A. That's right.

"Q. Tell me, if you will, please, in your own way, what business you have acquired for Southern Colorprinting and from whom you took it?

714 "Mr. LAYTON: Why don't we take them in the order that we have introduced these exhibits for identification?

"By Mr. RAICHLÉ:

"Q. Can you give me the weekly volume of fours?

"A. I can approximate it, sir.

"The Beckley, West Virginia Post Herald and Raleigh Register, their draw or run is 28,500 eight-page standard, which is equivalent to twice that many four-page units would be, if my arithmetic is correct, 57,000 four-page units.

"The Macon, Georgia Telegraph News, which contracted for 66,000 twelve-page standard size comic supplements, which, translated into fours you would multiply by three, and that would be 198,000 four-page units.

"Charleston, West Virginia Gazette Mail, the contract for which shows 100,000 twelve-page standard size comic supplements, but which I happen to know is actually drawing 111,000 twelve-page standard size comic supplements, which multiplied by three, gives 333,000 four-page units. Now Sir, that is the printing that is already in my plant.

715 "Do you wish to include Norfolk, which would not come into my plant until next March?

"Q. I would like to have Norfolk included.

"A. I am happy to have it.

"Q. You say you are happy to have it?

"A. I am happy to have Norfolk, and I am happy to accommodate you.

"On some date in March, the exact date escapes my recollection, we will start printing the comic supplement of the Norfolk, Virginia Pilot, which will consist of approximately 160,000 twelve-page units.

"Multiplying that by three, I believe it is 480,000 four-page units. That is all I have taken during that period from any of Mr. Koessler's operations.

"Q. You took every dollar of that business from Wilkes Barre, Pennsylvania, International Color Printing, didn't you?

"A. That is correct, yes, sir.

"Q. That is the distressed area we heard about?

"A. I heard of it as a distressed area, yes.

"Q. That didn't inhibit you from taking the printing, did it?

"A. No, sir.

716 "I am not primarily concerned with distressed areas. I am employed by Atlantic Features, and I am primarily concerned with their affairs.

"Q. This is business, and you felt you would go out and get it, isn't that so?

"A. That is correct, sir.

"Q. You got it on the basis of price?

"A. Yes, sir.

"Q. Transportation savings?

"A. That is right, yes, sir.

"Q. What is the aggregate of all these? Would you be kind enough, if it isn't an imposition—

"Mr. RAICHLE: Or somebody who has been writing them down.

"The WITNESS: Yes, I wish somebody else would add them up.

"Mr. FELDMAN: Here is what I got.

"Is that right?

"Mr. RAICHLE: It's all subject to correction.

"Mr. CLIMENKO: Isn't it approximately 1,100,000?

"The WITNESS: I want to say, sir, that you have asked me where did this printing come from.

717 "It did come from International Color Wilkes Barre, to the best of my knowledge. But the contracts were held, all of them, by King Features Syndicate.

"By Mr. RAICHLE:

"Q. I am asking you about where the printing was done prior to the time you got the business.

"A. That is right.

"Q. You got all that business on the basis of price as you told us?

"A. Yes, sir.

"Q. With the transportation saving?

"A. Yes, sir.

"Just a moment, sir. Macon was one of these, wasn't it?

"Mr. FELDMAN: Yes.

"A. There was no saving in the Macon transportation. The rate that we obtained from the trucker carrying Macon was from Newport News to Macon, and it was identical with the

rate that had been paid to that same trucker for hauling those supplements from Wilkes Barre to Macon. On a transportation basis, we were even with King Features Syndicate's International Color, where Macon was concerned.

718 "Q. You got the same trucker?

"A. Yes.

"Q. You got the business and the truck, did you? What was your weekly volume of fours on April 1, 1961, approximately if you can give it?

"A. I think around one million and a half, one million, six.

"Q. Then you went from one million, six to a million, eight?

"A. It depends on the figures there. Somebody there has the figures.

"Q. You greatly enhanced your business?

"A. Oh, yes.

"Q. By some 70 percent, 80 percent, something like that?

"A. I haven't figured it out, but that could certainly be a reasonable estimation, sir.

"Mr. LAYTON: The figures will speak for themselves.

"Mr. RAICHLE: That is why I didn't think he would be diffident about mentioning them.

719 "Q. Mr. Hornady, tell me, were you aided in the solicitation of this business, in your opinion, by this decree, by this order?

"A. No, sir.

"Q. Do you think you would have gotten an order without the order?

"A. Absolutely.

"Mr. RAICHLE: I thought this might be more intelligible to you if I make this point. If the order aided him in getting the business; we argue that the order accomplishes an active bit of inequity. If the order didn't help him to get the business, he can get it without, then we say there is no basis for the finding urged upon you by the Government before that the order was necessary to protect Southern Color Printing from irreparable damage. We claim that if the order helped him, that is the reason for vacating the order. We say if the order had no effect upon it, as he said, then, certainly, the 720 other order doesn't exist for his protection and one of the basic findings, in effect. I don't mean to argue, just to point out my contention.

"Q. Therefore the order isn't necessary for your protection, is it?

"Answer that, please.

"Mr. LAYTON: Do you want an opinion on that?

"Mr. RAICHLE: Yes, I will take his opinion. He said he would have gotten it anyway, that the order had absolutely nothing to do with it.

"A. Mr. Raichle, are you referring to the order in June, or the order handed down by Judge Henderson in Buffalo, in June, regarding—

"Q. The restraint started in April. You know that.

"A. Yes.

"Mr. LAYTON: Are you asking this question with respect to these particular six contracts?

"Mr. FELDMAN: Not six.

"Mr. RAICHLE: When you fellows get through kicking my question around, I will try it again.

721 "The WITNESS: I have to understand your questions, Mr. Raichle, to be able to give you the proper answers to them.

"Mr. LAYTON: Why don't you repeat the question?

"Mr. RAICHLE: It seemed to invoke so much discussion, I will see if I can improve on it.

"By Mr. RAICHLE:

"Q. Early in April, the court restrained the opening of the Sylacauga plant; is that right?

"A. April 1961, yes, sir.

"Q. Since that time you have gotten this business to which you have referred?

"A. Yes, sir.

"Q. And to which you have been testifying?

"A. Yes, sir.

"Q. You got it in the way you said you did?

"A. Yes, sir.

"Q. On the basis of price?

"A. Yes, sir.

"Q. Are you actively now, today, except for this interlude, soliciting business?

"A. I have been, to a limited extent in recent months and I expect to be after the first of the year.

722 "Q. You are going to get such business as you can?

"A. That is right, sir.

"Q. On the basis of price?

"A. That, quality, all the things that go into it.

"Q. Price and the complete service?

"A. Transportation, all that.

"Q. In your intention to continue to solicit, you are going to stress the matter of transportation saving, aren't you, to the prospective customers?

"A. If it has a bearing.

"Q. And it has a bearing in those southeastern states mentioned in the order, doesn't it?

"A. Yes, sir.

"Q. It is important there?

"A. Yes, sir.

"Q. While the Sylacauga plant can't print in competition with you and meet those transportation savings, you intend to go out and mention the transportation savings and stress the transportation savings in your solicitation of business.

"Isn't that true?

"Mr. LAYTON. I will object to that question. If you 722-a will ask a question, you can get an answer. If you want to make a speech, then I would characterize that—

"Mr. RAICHLE: If I want to make a speech, I will find a better audience than you. Let's not characterize my question as a speech.

"Mr. LAYTON: You have got a large audience now. I will so characterize the question.

"If you want to rephrase it, you are privileged to do so.

"Mr. RAICHLE: You wear me down."

"By Mr. RAICHLE:

"Q. You intend to continue in the future, in the matter of solicitation, as you have in the immediate past, isn't that so?

"A. Yes, sir.

"Q. On what date did you get this Norfolk job that Mr. Moore talked to you about?

"A. Last Friday, which, I believe, was the 30th.

"Q. Did you go to Norfolk to get it?

"A. From Newport News, yes, sir.

"Q. When did you know that you were going down there to get that business if you could?

723 "A. The previous week.

I had my appointment the previous week. Before I left New York to go to Newport News and visit my plant and catch up with the work that had been neglected because of my illness, I intended to run over to Norfolk, the few miles, and see if there was any chance that I might get the business.

"Q. When you left—

"Pardon me. Had you finished?

"A. I finished.

"Q. When you left New York, you intended to solicit or button up this business, didn't you?

"A. Button up is not the word.

"Q. You find a happier way of saying it.

"A. I will quite easily.

I intended to call on that newspaper and explore the matter about printing their comic supplement.

"Q. That was the object of your trip, wasn't it?

"A. No, sir.

"Q. What was the object of your trip?

"A. The main object of my trip was to catch up with my business at Newport News which I had neglected due to my illness, and also because I knew of the pendency of this deposition to go through my records down there and find materials which were subpoenaed or going to be subpoenaed and also, go through all my files and refresh my memory to the best of my ability.

"Q. Had you seen the subpoena at this time?

"A. No, sir. I had been told about it by my attorney.

"Q. What day did you leave New York?

The episode, shall we call it, of the subpoena was on the 10th.

"Mr. LAYTON: At this time, I am going to renew—

"Mr. RAICHLE: I am just fixing a time. I am not asking about the episode.

"Q. The subpoena episode, call it what you will, was November 10th, a Saturday.

When did you leave New York?

"Mr. LAYTON. I am going to direct the witness not to answer that question.

Mr. RAICHLE: I press the question.

Mr. LAYTON: I direct him not to answer it.

Q. Did you have your appointment prior to the 10th,
725 that is, your appointment with the Norfolk people?

"A. No, sir. I had no appointment.

"Q. When did you make it?

"A. I made the appointment when I was in Newport News.

"Q. On what day?

"A. Has anybody got a pocket calendar that I could refer to?

"Q. I was trying to give you some dates. November 10th was a Saturday. You can orient yourself from that.

"Or, if Saturday is distasteful, take the 12th. The next day would be the 13th.

"(A calendar was handed to witness.)

"Mr. LAYTON: Can we have the question read back?

"Mr. RAICHLE: I haven't forgotten it.

"Mr. LAYTON: I prefer the witness to get it."

"(The requested portion of the record was read back by the reporter.)

"A. I don't remember the exact date, but it was a week, the early part of the week of November 12th.

"Q. Would this be a fair statement of the fact; that while we were trying to get your testimony you were out getting our business?

726 "Mr. LAYTON: It would certainly be a characterization that you would like to place upon it.

"Mr. RAICHLE: I will take his word. What does he say about that?

"A. I think the testimony shows that I went to Newport News and made my appointment to see Norfolk, and that I was working for a few hours a day in my Newport News office going through the record.

I think that is evidence.

"Q. I mean, at the very time we were seeking your testimony, you were soliciting our business?

"A. That is correct, sir.

"Mr. LAYTON: Who is 'our'? Whose business are you referring to, sir.

"Q. International Color Printing.

You are soliciting the printing that was being done at International Color Printing, right?

"Mr. LAYTON: There is no testimony here that I recall that this business was your business.

"Mr. RAICHLE: Call it what you will.

727 "Q. You were out seeking the printing business that was being done by International Color Printing at the same time we were seeking your testimony, right?

"A. Yes, sir.

"Q. After you got the business, you came up here to testify?

"A. I came home, yes, sir.

"Q. Mission accomplished?

"Mr. LAYTON: Is that a question?

"Mr. RAICHLE: Yes.

"Mr. LAYTON: Or is that just a continued addition to your previous testimony?

"Mr. RAICHLE: My testimony?

"Mr. LAYTON: Yes. I think that is what we are having here.

"Q. Was your mission accomplished?

"A. A number of my missions were accomplished. I was able to catch up with my work at Atlantic Features headquarters. I was able to get the Norfolk business. And I was able to have certain conversations with Southern Color Print. I was able to get together the information required by this subpoena. I was able to call on one other paper, to discuss the printing of their comic supplement.

728 "Q. Which paper was that?

"A. The Richmond Times-Dispatch.

"Q. What day were you there?

"A. I think it was the 15th of November.

"Q. That is your best recollection?

"A. Yes.

"Q. What day of the week was it, do you know?

"A. That would be a Thursday. (It could have been the 14th; I am not positive.)

"Q. What was that name?

"A. Richmond Times-Dispatch. I know that I took three days to drive to Newport News, which I normally drive in one day, and I went by Richmond, which is one of the best ways to go from Washington to Newport News.

"Q. You took that route so you could make this solicitation, didn't you?

"A. Frequently I have taken that route when I was not stopping at the newspaper.

"Q. No, but this time you were going to stop and solicit some business?

"A. That is right.

"Q. You saw nothing wrong with that?

"A. No, of course not.

729 "Q. You were going to solicit it on the basis of price?

"Mr. LAYTON: Before Mr. Hornady was interrupted I believe he was answering your question.

"Mr. RAICHLE: Tell him what he was going to say before he was interrupted.

"Mr. LAYTON: I believe he was interrupted when you asked him another question. I want to ask him whether he was finished describing the activities which he was engaged in entirely.

"Mr. RAICHLE: I will join in the question.

"The WITNESS: You mean was I finished when I came back to New York?

"Mr. LAYTON: No. You were describing, as I recall, the activities which you were able to accomplish when you were interrupted by the questioning.

"The WITNESS: I think I had finished with the main activities.

"Mr. LAYTON: Fine.

"By Mr. RAICHLE:

"Q. I haven't shut you off, have I?

"A. I wouldn't expect a courteous gentleman like you
730 to shut me off.

"Mr. FELDMAN: Let's go on.

"Q. Have you some negotiations pending now for the sale of printing to be done by Southern Colored Printing, pending right now?

"A. I have two or three bids out.

"Q. Where are those bids?

"A. It seems to me that that is a matter of my own knowledge, that imparting that knowledge would give a competitive advantage to my competitors—my competitor who is present.

"Q. Would you tell us in what states they are?

"A. There is one in Florida, one in Indiana. I believe they are the only ones that I am expecting to hear something from. I have made bids on a few others some months previously and had no answer.

"I have decided that, for the present, that that is not possible to be turned into acquired business.

"Q. You feel uninhibited, unrestrained, in any way so far as the solicitation of business, as far as these southeastern states are concerned, don't you?

"A. That is a pretty broad question, sir.

731 "Mr. LAYTON: You are asking that legally, morally,
esthetically?

"Q. Let us take the various elements. You don't feel morally restrained, do you?

"A. I would feel morally restrained to misrepresent to any of these prospective customers.

"Q. I am not implying that you do. I am taking counsel's words. I am trying to use his words now.

"A. There are restraints that any honest man uses in his conduct of business, so I am not without restraint.

"Q. Short of these moral considerations, which seem to be—

"A. I have no restraint in my desire and purpose of getting whatever business I can get for Atlantic Features legitimately.

"Q. And for Southern Colored Printing?

"A. They do the printing, yes, sir. Just as International does the printing for King, and just as Greater Buffalo does the printing for NEA.

"That's all been cleared in the record.

"Q. You are out to get all the printing business for
732 Southern Colored Printing that you can get, isn't that so?

"A. Legitimately, yes."

(A short recess was taken.)

"Q. You don't care whether it comes from International Color Printing or where it comes from, do you?

"A. No, that is no consideration of mine.

"Q. All the business that you have obtained since April 1st did come from International Color Printing, did it not?

"A. No, sir, not all the business, sir.

"Q. Which one didn't?

"A. I obtained contracts from the two papers in Greensboro, North Carolina in the latter part of November or early December of 1961, which theretofore had been printed by Eastern Color at Waterbury, Connecticut.

"Q. You took all the business they had, didn't you?

"A. I don't know of any other customer they have in the southeast.

"Q. You felt entirely uninhibited morally or otherwise from taking every dollar of business that this outfit had that
733 you just mentioned; isn't that so?

"Mr. LAYTON: Come on, now.

"Mr. RAICHLE: I press the question.

"Mr. FELDMAN: I object to that question, how he felt and so forth. I think that it is improper.

"Q. You took it, didn't you?

"A. Yes, sir.

"Q. You made no apologies for it?

"A. No, sir, I made no apologies.

"Mr. LAYTON: Would apologies make you feel any better?

"Mr. RAICHLE: Don't be so captious.

"Mr. LAYTON: I think this line of questioning is amusing.

"Mr. RAICHLE: I owe you a very profound apology but let's continue.

"Q. In these places where you say you have bids pending who is your competition?

"A. I know that one of them is presently printed by International Color, another is presently printed by Greater Buffalo, and another doesn't have a comic supplement at present and is thinking of adding one.

734 "Q. Is it your testimony here under oath that in the solicitations that you have mentioned and in connection with the business which you have gotten, that you never once mentioned the Court's order or the fact that these defendants were under restraint?

"Mr. LAYTON: There has not been one question previously to establish that kind of testimony. How can you ask him whether it has been his previous testimony.

"Mr. RAICHLE: Stop quarreling about everything. If you want to coach him, coach him.

"Mr. LAYTON: You have asked this witness whether it has been his testimony that not once did he mention X or Y. You have not, prior to this time, asked him whether he did mention it.

"Q. You did mention it, didn't you?

"Mr. LAYTON: I will object to the form of the question.

"Q. Did you mention it?

"A. Did I mention what?

"Q. The fact that your competitors were under restraint, yes or no.

735 "A. You mentioned it and you agreed that I understand that to be the case.

"Q. In the solicitation of the business that you had told us about these various accounts, did you mention in the course of such solicitation the fact that your competitors were under restraint? Yes or no, please.

"Mr. LAYTON: Do you want the question read back?

"Mr. RAICHLE: There are only so many time outs after the two minute warning, you know.

"Mr. LAYTON: We haven't taken a time out yet.

"Mr. RAICHLE: I will take time out if you want to talk with him.

"The WITNESS: There is no need to talk with him. I want you to clarify your question before I answer it. Are you referring to these contracts that have been put in evidence here?

"Q. I will take as long as you want. In the course of solicitation of business since April 1961, including those which 736 have been specifically mentioned in the course of your testimony, did you mention the fact, discuss with the persons with whom you were soliciting business from, the fact that your competitors were under restraint by the court order?

"A. I think I probably did in some cases.

"Q. Is it your best recollection that you did?

"A. The reason I hesitate is that I recollect one or two cases where the case was discussed but I don't know when that was, whether it was before April 1, 1961.

"Q. Were you discussing the fact that they were going to be under restraint before they were?

"A. No, sir. If I were discussing anything, it was this suit that the Government has against the defendant for the monopolistic practices and all that. You are familiar with the suit.

"Q. Did you discuss with any customer or potential customer, subsequent to April 1, 1961, the fact that your competitors, or certain of them, were under restraint?

"A. I don't remember any specific conversation.

"Q. You say you did not?

"A. I won't say I did not. I say I don't remember.

"Mr. LAYTON: Could you please read the question?

"(Question was read back by the reporter.)

737 "A. I discussed it, I am sure, with customers of mine who are also stockholders of Atlantic. For instance, I had a letter from Carl Jones of the Johnson City, Tennessee Press Chronicle, in which he said 'I read about this, but what does it mean?'

"I wrote him a letter and told him my understanding of what it meant.

"I subsequently seen two or three or four of my stockholders who are also customers, and I have explained it to them 738 at their request.

"Q. Haven't you told various persons that the Sylacauga plant would never open?

"A. No, sir. That would be the most absurd statement.

"Q. Haven't you told them it would never open under our ownership?

"A. No, sir. That would be making a certain statement as to the decision of the Court. I'd never do that.

"Q. Did the fact of this Court order of June 22, 1962, help you in obtaining any of this business?

"A. No, sir.

"Q. You would have obtained it anyway, would you?

"A. As I said a while ago, the main thing with quality and service being generally equal, the main thing is cost, transportation and your quotation for the printing.

"Q. Do you fear the competition of the Sylacauga plant in printing?

"A. In the context of —

"Q. Won't you answer that directly?

"A. Sir?

"Q. Won't you answer that directly?

739 "A. Well, no, I can't say that I fear it just like that because in some ways I fear it, in other ways I don't fear it.

"Q. You believe in free enterprise, don't you?

"A. I certainly do.

"Q. You believe in competition?

"A. That's right, as long as it is fair and there is competition.

"Q. You have no objection to competing with the plant at Sylacauga or anywhere else for printing as long as there are no predatory practices, tie-ins or matters of that kind?

"A. I think that is substantially correct, sir.

"Q. The Greater Buffalo Press, did they ever take a dollar of business away from you?

"A. No, sir, only their agents, one of their agents.

"Q. By that you mean King Features?

"A. King Features took a customer away from me.

"Q. What customer?

"A. The Sarasota, Florida News.

"Q. When?

"A. Late summer, early fall.

"Q. Of what year?

"A. This year.

740 "Q. How much did that amount to in fours per week
"A. I think their circulation was around 11,000 and
it was an eight-page supplement, twice 11,000 would be
22,000 fours, approximately.

"Q. Minimal, then?

"A. It was a small run, but consequential to a small operation like mine.

"Q. Your recollection doesn't serve you to tell or name any other instance when any defendant took any business away from you, does it?

"A. When I—

"Q. Yes or no, please.

"A. You want the instance.

"Mr. LAYTON: He is asking you if you can remember any.

"The WITNESS: Yes, I can remember one.

"Q. Which one?

"A. In addition to that.

741 "Q. Where was that?

"A. That was sometime ago.

"Q. How many years ago?

"A. I would guess around 1957 or perhaps 1956. It's around that area where West Palm Beach Post Times was printed at Southern Color Print. It is one of the Perry newspapers of Florida.

"They decided to have the same or approximately the same comic supplement for all of their papers. The others of which were printed under contracts with NEA and at Buffalo or Dunkirk. They cancelled that agreement so West Palm Beach could be a part of their general arrangement of the other Perry papers.

"That is the only other one, sir, that I remember."

"Q. Do you sell from a price list?

"A. No, sir, I don't sell from a price list.

"Q. Does Southern Colorprinting sell from a price list?

"A. They don't sell at all except to me."

"Mr. RAICHLE: I might make the observation, your Honor, one of the things complained about, as I understand it, 742 is that International Color prints largely for King Features, and here we have this question and answer:

"Q. Does Southern Color Printing sell from a price list?

"A. They don't sell at all except to me.

"Q. In their behalf, is their printing sold from a price list?

"A. No, sir. Prices vary according to the cost of the job.

"Q. That is traditional in this business, is it?

"A. Yes, I think so, although at my last deposition I recall that your colleague, Mr. Moore, sought to show that you had a price list, and offered to show it, and he showed a contract Greater Buffalo had made with the New Orleans Times Picayune.

yune which broke down various elements of the cost but made no mention of net, which would force anyone to assume that they were printing at no profit at all, or the net was tacked on to each of these items that were broken down to make 743 the price New Orleans was paying.

"That is the only knowledge I have of anybody claiming to sell from a price list.

"A price list, sir, is usually a list that a salesman has a bag of this quality beans is so much and so on. I have never seen or heard of any price list like that in the comic supplement printing business.

"Q. You do not object to competing with a plant at Sylacauga, Alabama, do you?

"A. I don't object to going after business. I do object to the creation of a business that if it wishes to, can go to my customers and make propositions to them of whatever nature, even if it caused a loss, in order to eliminate my competition.

"Q. Did you do that when you eliminated that other competitor?

"A. I haven't eliminated that other competitor. I guess you are referring to Eastern.

"Q. Yes.

"A. No, sir, I just eliminated that business in one city, Greensboro, North Carolina. They still print for a great number in their natural territory which is New England.

744 "Q. The only printing which is competitive with yours is that which you took, isn't that correct?

"A. That is correct, yes.

"Q. When you were talking about the market, you included the newspapers who print their own?

"A. No, I don't include that. I don't regard that as part of the market. All this is the same sort of thing that we went over three or four days a year and a half ago.

"Q. Is that irksome to you?

"A. Yes, sir, it is harassing. We are called here not long after 745 a major operation, to give testimony. I am positively willing to cooperate, as long as my health permits, to give you new testimony that is required, but I think it is rather absurd to harp back to matters which are already in the record because of the deposition which I gave more than a year and a half ago and which I understand that Greater Buffalo did not see fit to turn into the Court.

"Q. You gave me a good idea, thank you.
You have read your deposition, haven't you?

"A. Yes, sir.

"Q. Did you, in reading it and now that you have read it, become aware of any part of it that you want to change, add to, amend, alter in any way?

"A. No, sir.

"Q. You stand on what you said before?

"A. Yes, sir.

"Q. Let's get down to the visit to Mr. Feldman and these projections of ours which you and Mr. Smith were discussing. By the way, did you and Smith go there together?

"A. No, we were on separate airplanes. I went in the morning and he went later in the day.

"Q. You were discussing the matter with him before
746 you left?

"A. He had mentioned that he had the figures and he was looking at them.

"Q. Did he show them, that he had them down there in is plant?

"A. Yes, and he was looking at them.

"Q. What day was this?

"A. It was during that time I was down there. I don't remember what day it was, but it was sometime around between the 15th and 22nd.

"Q. Did he show you our projections down there?

"A. Did he show them to me?

"Q. Yes.

"A. I think he did, yes, sir.

"Q. When you saw them at the Department of Justice, you saw them for the second time, or at least it was not the first time?

"A. Thinking about it, I may not have seen them at the Department of Justice. If I saw them, it was for the second time.

"Q. The time that you now recall is the time when you and Mr. Smith were discussing them down there at the Southern Colorprinting?

"A. He mentioned them to me.

"Q. What did he say?

747 "A. He said he was looking at them, checking to see how they looked from the standpoint of various costs.

"Q. Did he make any comment to anyone about the various costs?

"A. I think at the time he talked to me, he was figuring and checking on it. I don't think he reached any conclusions.

"Q. Did he express any conclusions to you?

"A. I remember one thing he mentioned because it was of particular interest to me, that there was a very large cost there for the sale of comic supplements. I was wondering at the time why that cost was included in a projection that had to do with their operating the plant with these customers that were allowed under the order and without any more papers. I couldn't understand why there would be a large sales cost. That is one thing.

"Q. Do you remember what the sales expense contained in the projection?

"A. It was \$20,000, \$25,000 a year.

"Q. Wasn't it \$15,000 in each of the two columns?

"Mr. LAYTON: Would you like to refresh his recollection?

748 "Mr. RAICHILE: Sure, he can look at it."

(Document handed to the witness.)

"Q. Do you know about where your left thumb is?

"A. It says here sales expenses 15,000, travel expenses 10,000, administrative salaries' 20,000. The sales would be the sales expense and the travel expense which would come to 25,000.

"Q. Does Southern Color printing have your sales services and your expenses for an aggregate less than that?

"A. Yes, sir.

"Q. Did you say yes, sir?

"A. I said you, sir; an aggregate less than that?

"Q. What is that?

"A. I think that is a private matter. Do I have to answer that?

"Mr. LAYTON: No.

"Q. I will press the question.

"A. I decline to answer, sir.

"Mr. LAYTON: I will direct him not to answer.

749 "Q. What other items did Mr. Smith discuss with you?

"A. He was talking something about labor cost and so on, but it didn't register much with me because I just don't have that sort of thing in my mind. I do remember him mentioning labor cost.

"Q. You have been in this business how long?

"A. Define that. How long have I been in the comic supplement business?

"Q. Yes.

"A. I have been handling comic supplement printing sales for twenty-five, thirty years, I suppose.

"Q. To fix a price, you have to know something about costs, don't you?

"A. No, you are given the price by the printer in one case or by your superior in another case, and you quote that price.

"Q. Do you know a single figure in either of those two columns on our projection there, or the projections, which is different than what you think it ought to be?

"A. No, sir, I haven't examined this. The only thing I see—

"Q. Take a look at it now, if you will be good enough.

"A. Employee benefits, I don't know anything about 750 what your employee benefits are, or what your payroll is, or what your amusement is, or what your supplies or what your depreciation, the power would cost, or the real estate that you would buy, or the miscellaneous. I don't know about that.

"Q. Excuse me for interrupting. Do you know what any one of those items ought to be?

"A. No, sir.

"Q. Do you have an opinion with respect to any one of those items?

"A. If I got down and did a lot of figuring, I might be able to figure out what would be a fair estimation, but I haven't, as I say, I haven't studied this and the only thing about it that sticks out to me is the sales expense and travel expense. I am a little interested in administrative salary because that seems rather large, telephone and telegraph, broke that down into months. Even then I think, it would be a little on the large side. Interest, I don't know how much you owe and how much you have to pay. Miscellaneous, that is a minor item, I don't know. It all gets down to the fact that without a good deal of studying and figuring, I would not be able to 751 contest any of these items if you wanted me to contest them or agree to any of them.

"Q. Let me put it this way: Is there any category of costs, element of cost improperly listed there so far as being properly included as an element of cost?

"Mr. LAYTON: You mean the element itself?

"Mr. RAICHLB: Yes.

"A. I would not be prepared to answer that without a careful study of it, which I haven't had time to make.

"Q. After having discussed it with Mr. Smith, seen it with Mr. Smith, now seen it here, and by 'it' I mean this exhibit with these two columns, can you point to any items of cost which is improperly there?

"A. I would question the item for sales expense and travel expense.

"Q. I am not discussing the amounts now.

"A. The inclusion of—if you are not discussing the amounts, I can't answer the question. Even with a plant that cannot go out and solicit new business, you would probably have some sales expense just going around and telling your customers that you were going to move them in there and that sort of thing, but I don't think it would be anything like \$10,000 a year and I don't think it would require salesmen for \$15,000 a year. I think Mr. Koessler or Mr. Clinton can get on the telephone and handle this thing or maybe make a round of the customers.

"Q. That suggests to me that you probably handled some of these solicitations by telephone, don't you?

"A. Yes, sir, I have talked on the telephone to prospects.

"Q. Your solicitation is not measured by the number of trips you made?

"A. Largely because these telephone calls are usually just, 'What did you decide about the proposition I made?'

"Q. A follow-up call?

"A. That's right, or 'Is your situation such now that you can consider a proposition from us?' That sort of thing.

"Q. It is all part of the solicitation?

"A. Like any business. Telephone call—just as personal calls.

"Q. You can't help us then or harm us so far as these projections are concerned, can you?

753 "A. No.

"Mr. LAYTON: I think his testimony speaks for itself.

"Q. You know of no item improperly included?

"A. None, except what I pointed out about the sales expense which I questioned.

"Q. But you don't question any other item?

"A. No, sir, I am not in a position to question it.

"Mr. LAYTON: I think his testimony has been that he doesn't have the expertise or the opportunity to express an opinion.

"Mr. RAICHLE: Opportunity?

"Mr. LAYTON: He said that he has not had an opportunity to sit down and figure and examine.

"Mr. RAICHLE: You said he didn't have the opportunity to express an opinion.

"Mr. LAYTON: No, I didn't mean to express an opinion. An opportunity to examine in order to express an opinion. An opportunity to examine in order to express an opinion.

"Q. Did you read these notes?"

754 Mr. RAICHLE: It refers to the note as part of Exhibit A.

"A. No.

755 "Q. Did Mr. Smith discuss the notes with you?

"A. No, sir.

"Q. How did Smith get these projections of ours?

"Q. Mr. LAYTON: Wouldn't it be better to ask Mr. Smith that?

"Q. Do you know; did he say?

"A. I don't remember that he ever said. I felt, of course, that he had gotten them—would have had to have gotten them from Mr. Koessler or Mr. Feldman, and I would doubt very much that Mr. Koessler would send them to him. I assume he must have gotten them from Mr. Feldman.

"Q. Did he stay in Washington after you left?

"A. No, we went on the same plane.

"Q. Did he have these projections with him?

"A. I'm not sure of that, sir.

"Q. Who initiated the visit to the Department of Justice? Did you call the Department and say you wanted to come or did someone there ask you to come?

"A. No, I called the Department and asked them did they have copies of my deposition which I did not have with me down there. They said yes. I said, 'If I came up there, 756 could I take a look at them?' They said 'Of course.'

When I got there, I went to Mr. Feldman's office and he handed me the deposition and took me to the library and left me.

"Q. You were with Mr. Feldman this morning, weren't you?

"A. Yes, sir.

"Q. Going over your testimony?

"A. We discussed the testimony, yes, sir.

"Q. What part of it?

"A. Various things.

"Q. Did you discuss these figures?

"A. No, sir.

"Q. Or any of them?

"A. No, sir.

"Q. Did you discuss the business which you had acquired?

"A. Yes.

"Q. Which you had taken from International Color Printing?

"A. That was among—I mean, we didn't discuss them individually but we discussed the fact that I did take business away—that I did acquire business.

"Q. Was anything said about these politicians who
757 were pleading for the people up there in that depressed area?

"A. No, sir.

"Mr. LAYTON: If you would care to make a statement on their behalf now, go right ahead.

"Mr. RAICHLE: I think they have been quite active.

"Q. Prior to the time you called Mr. Feldman to go up and read your deposition, as you say, when had you talked to him last?

"A. On the way to Newport News, I was driving through Washington—as a matter of fact, I spent a night there and the next morning I saw the Washington Post and Washington Star about Hall Features.

"Q. And about the printing, too, didn't you?

"A. No, I didn't talk to them about printing.

"Q. Who was going to print them if you got the business?

"A. We are talking about little panels and little daily column strips. That had nothing to do with printing. Then I took a taxi by the Justice Department and I caught Mr. Feldman just as he was going out and said hello. I said, 'Looks like there might be another deposition going on in New

758 York.' He said, 'Well, I can't tell you anything about that. The thing to do is talk to your lawyer about that.' I said, 'I am in constant touch with my lawyer about that.' That was about all we discussed.

"Q. Next prior to that, when did you have your last talk to anybody connected with the Department of Justice?

"A. That was some months ago.

"Q. When?

"A. I may have talked to him in the early summer. I'm not sure of this. I may have called him and asked him what the status of the case is, 'How are things coming along, what's happening?'

"Q. Well, did you?

"A. I am not sure, sir, but I think I did. I wouldn't swear to it.

"Q. Did you ever make a written statement for the Department of Justice?

"A. I made an affidavit.

"Q. Other than the affidavit which is used in the motion papers, did you ever make a written statement?

"Mr. LAYTON: At any time?

750 Mr. RAICHLE: Yes.

"Q. In connection with this matter?

"A. I have written Mr. Feldman or Mr. Carlson letters about various things but I never made a statement for them.

"Q. Never made a written statement?

"A. Not that I recall, sir, other than the affidavit.

"Mr. RAICHLE: What is your pleasure about time?

"Mr. LAYTON: Off the record."

(Discussion off the record.)

"Mr. LAYTON: We started at approximately 11 o'clock this morning and I suggest that we continue the deposition until about 1 o'clock at which time we can take a comfortable luncheon recess and subject to Mr. Hornady's health, come back shall we say at 2:30, and continue for a while then in the hope that possibly the direct examination may be concluded today, and that tomorrow the cross-examination will be concluded.

760 "Q. When you had been soliciting business, you knew King's prices, didn't you?

"A. Not in recent years because I'd say their prices have changed, but I did from my private records know when I left them what their prices were, from some of these papers. But their prices had been changed in many, many instances.

"Q. You found that to be helpful, or at least to some advantage in soliciting business?

"A. Yes. It is always good for a salesman to know what he is up against.

"Q. Especially when bidding?

"A. Yes, sir.

"Q. In terms of weekly fours—I have trouble with the expression but it seems to be what we are using here—what was the volume at Southern Colorprinting when you went with them?

"Mr. LAYTON: Can you give us a date on that?

"Q. 1955, 1956.

"A. Early 1956, sir.

"Q. All right, that is the date.

"A. We were printing, I think, Southern Colorprint was printing, I think the figure is 243,000, eight page supplements for the southeastern group. They were printing West Palm Beach which circulation I just don't remember.

"Q. Could you translate that into weekly fours for me?

"A. I haven't added these up. They were printing their own supplements which would I suppose come to around 50,000. I believe they had a sixteen page supplement. Let's guess that West Palm Beach was 40,000, eight page units. So we will translate that into around 763,000, fours as near as I can estimate what they were printing at that time.

"Q. Under your leadership stewardship or with your help, call it what you will, the business has grown ever since?

"A. Call it what you will, since I have worked for them they have increased their volume of business, yes, sir. That was the purpose of them hiring me to work for them.

"Q. Your special ability to sell the product?

"A. I have a great deal of experience.

"Q. That makes for the ability to sell the product, right?

"A. Yes, sir. I will grant that.

"Q. They had confidence in you and you had confidence in yourself, you went out and did a job, right?

"A. Yes, I went out and got certain business for them.

"Q. You say they had 700,000?

"A. It looks like around 763,000.

"Q. And now they are up to what, two million seven, something like that?

"A. No.

"Mr. LAYTON: Let's get the figure.

"The WITNESS: We added these up a little while ago.

"Mr. FELDMAN: 1,068,000. That is, including Norfolk.

"The WITNESS: It doesn't include Greensboro because it runs higher than that. What's that figure over there?

"Mr. FELDMAN: 1,068,000.

"The WITNESS: That makes around 1,460,000."

Mr. RAICHLE: I might say to Your Honor, these all work out here.

"By Mr. RAICHLE:

"Q. You mean the increase?

"A. No, that is the total.

"Q. What are you talking about? It's a total of almost two million, eight?

"A. Yes, that is the increase.

"Q. Take your time.

763 "A. It's around three million, the total amount, or it will be when Norfolk starts.

"Mr. FELDMAN: What was that figure?

"A. Around three million when Norfolk starts.

"Q. Around 3,150,000?

"A. Yes, sir, a little over three million.

"Q. From 700,000?

"A. From 763,000, yes, sir.

"Q. More than four times, right? Four times seven is twenty-eight?

"A. Yes.

"Q. What part of that increase do you attribute to your sales acumen, and what part do you attribute, if any, to the restraints byway of injunction that the defendants labor under?

"A. I attribute none of it to any so-called restraints. I do not attribute it entirely to any acumen. I attribute it to my acumen and salesmanship, plus advantages of transportation and our willingness to take less profit than some of the other color printers and agents had been taking.

"Q. If you don't attribute any part of it to the restraints, you would say that you would have had the same growth without the restraints?

764 "A. I think that, sir, except that I could possibly have lost considerable business.

"Q. Do you want these restraints continued?

"Mr. LAYTON: Do you want his subjective feelings on this?

"Mr. RAICHLE: Yes.

"A. If those restraints were lifted, and unfair advantage, such as selling below cost, could be surmised—I mean, the lack of unfair advantage being surmised, I would have no objection. The thing that bothers me, if Sylacauga is operating here on

one side, while Wilkes Barre up here on the other, and this is a little outfit furnishing a little competition in the southeast, they would have the power, lacking any restraints, to knock me out of the business.

"Q. Assume that the competition of the Sylacauga plant was the same, in the hands of the present defendants as it would be in the hands of some independent who might buy it and operate it, or in the hands of someone else who would build a plant there and operate it, would you have any objection?

765 "Mr. LAYTON: You are posing a hypothetical question to the witness.

"The WITNESS: I would like for it to be reread, because there were several 'ifs' in there.

"(The pending question was read back by the reporter.)

"A. Couldn't you frame that question or series of questions in a more clarified manner, sir?

"Q. In the absence of predatory, illegal practices, you wouldn't mind the competition of a plant in Sylacauga, would you?

"A. No, sir.

"Mr. LAYTON: He has answered that before.

"Q. What is the capacity of your Southern Color Printing, in terms of weekly fours?

"A. I think we could probably print another million or million and a half. I am not sure of that.

"Q. That is your best judgment?

"A. I must apologize for not having a mind for figures. I just don't retain them in my mind.

"Q. Do you mean that a man who gives a price every day doesn't have a mind for figures?

"A. I have a note of the price I am going to quote.

"Q. So that you won't forget it?

"A. Yes, that is right. I refer to it from notes.

766 "Mr. LAYTON: Are you getting at your previous question in another way, or are you withdrawing that previous question?

"Mr. RAICHLE: What?

"Mr. LAYTON: I am asking whether you are rephrasing your hypothetical question or whether you are withdrawing it?

Mr. RAICHLE: I guess it got lost in the shuffle, like so many of them.

"By Mr. RAICHLE:

"Q. Have you made any computation on which the estimate of the aggregate loss of savings to the newspapers in this area covered by the Court's order is a result of the inability to get the transportation saving?

"Mr. LAYTON: May I have that question read back." (The pending question was read back by the reporter.)

"A. I don't understand the question.

"Mr. LAYTON: I am afraid I don't understand that question.

"Mr. RAICHLE: Just be quiet and I will get the ques-

767 tion to you.

"Q. Mr. Hornady, if the plant at Sylacauga were opened and servicing newspapers, customers, printing customers in this area, there would be substantial freight savings; isn't that true?

"A. There would be substantial freight savings.

"Q. Transportation?

"A. Transportation savings.

"Q. Yes?

"A. Yes.

"Q. Do you know how much in terms of dollars the aggregate of such savings would be?

"A. No, sir, I don't.

"Q. Have you ever tried to find out?

"A. There were some papers entered in Washington by one of the defendants that purported to show those savings, but I have forgotten what they were.

"Q. Where did you see those papers?

"A. During—they became a matter of public record when they were introduced in that Buffalo hearing.

"Q. You looked at them?

"A. Yes, sir.

"Q. Did you have any quarrel with the figures?

"A. No, sir, I didn't quarrel with them.

768 "Q. So that the savings represented by the defendants would, in fact, be effected, according to your opinion; right?

"A. The savings—

"Q. Which you saw in the paper which you are referring to would, in fact, be accomplished; isn't that so?

"A. I didn't say they would not. I did not say they would. I had no opinion on that. I made no tabulation.

"Q. You know that savings would be substantial?

"A. There would be substantial savings. Who would enjoy those savings, I don't know.

"Q. Assume that they would be enjoyed by the newspapers in the South, the consumers. Don't you think they are entitled to that?

"A. On that assumption, they would be substantial, sir.

"Q. But under this restraint, those savings are denied to those newspapers; isn't that so?

"A. Under the restraint, the plant was not permitted to open until sometime in June, and they have not seen fit to open since then. If they had seen fit to open at the time the order was entered, those savings would now be enjoyed by those
769 newspapers you speak of, provided those newspapers were given the benefit of those savings.

"Q. You are talking about four or five particular runs. I am speaking generally. If the plant would open and could service newspapers in the area referred to in the order, there would be substantial savings to the consumer; isn't that true?

"A. There would be substantial savings. I won't go any further, because I —

"Q. Assume they are passed on to the consumer.

"A. In that case, there would be savings.

"Q. Yes; from the transportation?

"A. Yes, sir.

"Q. Won't you agree with me that it is economically unsound to continue this order of things?

"Mr. LAYTON: I will object to that question. If you want an opinion, why don't you take your own? I think that is all you are really saying.

Mr. RAICHLE: I want to see what he thinks about it.

770 "Mr. LAYTON: Read the question back to the witness.
" (The pending question was read back by the reporter.)

"The WITNESS: That is economically unsound.

"Mr. FELDMAN: To whom is it economically unsound?

"By Mr. RAICHLE:

"Q. From the standpoint of the consumer?

"Mr. LAYTON: By the 'consumer', do you mean —

"Q. The newspapers who pay for it.

"A. Taking your assumption that all of these savings and transportation would be passed on to the newspapers, then it would be a good thing for them if the plant were opened.

"Q. Don't you know that the estimated savings would be in excess of \$160,000?

"A. No, sir, not of my own knowledge. I don't dispute it. I just don't know.

"Mr. LAYTON: Can I suggest at this point that we break?

"Mr. RAICHLE: Sure.

"(Whereupon, at 1:00 p.m., the deposition was adjourned for a luncheon recess.)

771 AFTERNOON SESSION—2:30 P.M.

"JACK R. HORNADY, Examination continued.

"By Mr. RAICHLE:

"Q. The seven hundred and some thousand fours that Southern Colored Printing was printing at the time you went there had all been taken from International Color, had it not?

"A. Yes. A group called the Southeastern Group, with twelve or thirteen papers, had gone in together, to have the same supplement, advertising, and so on, that had formerly been printed by International on the King Features contract, and two or three years prior to my going to Atlantic Features that business was taken away from King and International by Southern Color Printing, approximately 243,000 eight-page units.

"Q. Historically, the Southern Color Printing business has been business taken away from others, notably and principally, International Color Printing?

"A. With minor exceptions. The Charlotte News started printing their own. That does amount to 70,000 supplements—772 it isn't too minor, where I am concerned. Then, of course, Newport News, at one time, was printed by King before they built their plant.

"Q. What I am getting at is—and I think the figures show it—is this, that historically and over the years, Southern Color Printing built its business by taking printing that had previously been done by International Color Printing, except for these minor exceptions, or these exceptions, you have mentioned?

"A. Yes, except for the exceptions.

"Q. On the other side of the coin, International Color Printing took nothing, except those minimal instances that you mentioned, from Southern Color Printing?

"A. Sarasota, and we have the Palm Beach, as far as I know.

"Q. Over the years, there was very little to complain about in the way of loss of business on the part of Southern Color Printing?

"Mr. LAYTON: Do you want an opinion in answer to that question?

"Mr. RAICHLE: I am asking him a question.

"Q. That is right, isn't it?

"A. Repeat the question.

773 "Q. There was very little to complain about in the way of loss of business to International Color Printing, insofar as Southern Color Printing was concerned?

"Mr. LAYTON: On behalf of whom are you asking?

"Mr. RAICHLE: I said on the part of Southern Color Printing.

"Mr. LAYTON: You are asking—who are you asking?

"Mr. RAICHLE: Listen to the question and stop talking so much and you would be better informed—not wiser, just better informed.

"Mr. LAYTON: I am just trying to clarify the question.

"Mr. RAICHLE: No, you are trying to filibuster.

"Mr. LAYTON: I think the record is eminently clear as to who is conducting a filibuster. I want the question clear so that the witness can understand it.

"Mr. RAICHLE: Let me tell you something when you get through.

"Mr. LAYTON: I am through.

774 "Mr. RAICHLE: In the first place, you have no standing to object. You are not a party to this proceeding. You are interrupting. As a matter of fact, you are an interloper.

"Mr. LAYTON: That is just fine. I am glad that the record is being made clear. If I don't have any standing, this witness is my witness.

"Mr. RAICHLE: We will discontinue our examination. I don't want to be your guest in your room, with you interrupting the examination.

"Mr. LAYTON: This is your examination, sir. You may conduct it, you may terminate it, you may do everything you want.

"Mr. RAICHLE: I will proceed against the witness for his contempt and his perjury.

"The WITNESS: Make yourself clear about that, please, sir.

"Mr. RAICHLE: Exactly what I said.

775 "The WITNESS: I have been aware of your extravagant and wild use of the English language, but that is very wild and very extravagant and very emotional. You have no such grounds whatever, to make that statement."

The COURT: I think Mr. Raichle, I will recess until two, at this time.

(Thereupon a recess was taken at 12:30 p.m.)

776 (Proceedings resumed pursuant to recess, commencing at 2:10 p.m.)

Mr. RAICHLE: In conformity with the suggestion made in Chambers, I will omit certain portions of this deposition from my immediate reading, but with the understanding that the whole deposition is in evidence. There are some portions I want to call particularly to your Honor's attention, with your permission, at this time, because I think they bear on what may be subsequently developed. I understand Mr. Feldman has a witness from out of town whom he would like to swear out of turn, and that is all right.

The COURT: Take these questions and answers which Mr. Raichle wants emphasized and then copy the whole thing from beginning to end into the record in addition to the particular ones that Mr. Raichle will emphasize.

777 Mr. RAICHLE: This is Page 93.

"Q. You have no basis for complaint, have you?

"A. No, not about what they had taken away from us."

Mr. RAICHLE: That could be stipulated to mean Greater Buffalo Press and International Color Print.

Mr. FELDMAN: Wait a minute—

Mr. RAICHLE: The context shows it, when His Honor reads it—

Mr. FELDMAN: Why not let it stand on the context.

"Q. Just one, single complaint to make about International Color Printing or Greater Buffalo Press since you left King Features and went with Southern Colorprinting? Yes or no, please."

Mr. RAICHLE: Then there was some colloquy and the question was read back.

778 "A. I had a number of complaints regarding the activities of agents of Greater Buffalo Press and International Color Printing.

"Q. Do you mean King Features?

"A. King Features, NEA.

"Q. Can you tell me one thing that Greater Buffalo Press did or International Color Printing did or Dixie Color Printing did of which you complained?

"A. Nothing, except what they did, sir.

"Q. By 'the agent', let's particularize, you mean King Features?

"A. King Features and NEA.

"Q. When you say 'the agent', you have previously told me you stood on the testimony you gave last time and the last time you said that International Color Printing was a subcontractor of King Features, didn't you?

"A. I may have. I don't know.

"Q. Was that the truth?

"A. I remember saying at the time that when an organization or a representative goes into see somebody to sell him something——"

Mr. RAICHLE: Page 95, Line 15:

"Q. I am asking if what you said before on the subject is the truth?

"A. I would say that it was—International was a subcontractor of King Features Syndicate."

Mr. RAICHLE: Farther down on page 95:

"Q. Save for anything that King Features might have done or the NEA might have done, can you tell me one, single complaint that you have of the conduct or any act or deed on the part of International Color Printing or Greater Buffalo Press?

"A. That is a long period of time.

"Q. Since you went with that Southern Colorprinting?

"A. That's been nearly seven years.

"Q. Tell me, what is the complaint?

"A. I've got a perfect right to take time to answer. I want to tell the truth. I've got to have time to recollect, sir.

"Q. Tell me the complaint, what is it?

"A. Wouldn't it be a good idea for you to calm down and let's conduct this examination the way you did this morning.

"Q. Don't lecture me.

"A. I will lecture you if you lecture me.

"Q. As you sit there now, you have not had time enough to recollect any complaint which you have to make against these two companies?

"A. Because you have constantly been interrupting my reflection.

"Q. From your interrupted reflection, in the quiet and peace of the consolation of your counsel sitting there to help you, you can tell me.

"A. Give me a little uninterrupted to tell you.

"Q. All right.

"A. I was not conscious of my own knowledge, prior to the filing of this case, that Greater Buffalo Press was engaged in my activities that were hurtful to me and at the same time unfair."

Mr. RAICHLB: Line 13:

"Q. ——can you tell me a single act or deed on the part of the Greater Buffalo Press, International Color Printing or Dixie Color Printing, of which you complaint or which you would even criticize?

"A. No, I don't recall anything, sir."

Mr. RAICHLB: I want to ask about the restraints here:

"Q. Prior to the time that the government sought this restraint against these defendants, did you discuss with the Department of Justice or any representative of the Department of Justice the matter of obtaining such a restraint?"

"A. Would you repeat the question, please?

"(The pending question was read by the reporter.)

"A. By restraint, I assume you mean not permitting the opening of the Sylacauga plant? No, sir, I did not discuss that.

"Q. Did you ask for such a restraint?

"A. No, sir.

"Q. Do you ask for it now?

"A. No, sir."

Mr. RAICHLB: Line 18:

"Q. If the Sylacauga plant did not sell below cost and compete fairly with you on that basis, you would have no objection to their operation, would you?

"A. As I said a while ago, I am in no position to object or not object. If you ask me would I like it, naturally, anybody likes less competition, but they do not expect it, naturally.

"Q. In other words, you can think of no basis on which you are entitled to freedom of competition?

"A. With the reservation about the predatory—possible predatory action.

"Q. Assume fair, honest, decent, good faith, hard competition, do you know of any reason you are entitled to be protected against that?

"A. With that assumption I don't know of any reason."

Mr. RAICHLE: Page 100:

"Q. You have had months, hours on end with Mr. Feldman and the rest to think of them, haven't you?

"A. I have had considerable time."

Mr. RAICHLE: "Them" refers to complaints.

"Q. And that is the best or the worst, depending on the point of view, that you can come up with on that subject, is that right?

"A. I have stated what I have."

Mr. RAICHLE: Over on the bottom of page 101, line 22:

"Q. Your product and Koessler's product you say are the same?

A. In some cases ours are better; in some cases his are probably better. I don't know. They look about the
783 same. They are not enough different to make the reader of a newspaper or ordinarily the publisher of a newspaper to see any great difference in them.

"Q. They are competitive?

"A. That's right.

"Q. Competitive in point of quality, competitive in point of price, competitive in point of service?

"A. Competitive in quality and service.. In some cases I can give better service than Mr. Koessler because I am closer to them. In some cases he doubtless can do the same. I do think that because of the fact that I don't print nearly as many papers as he does, that I can probably give a little more individual service than he can. All of that is not of great significance. As to prices, they are generally competitive."

Mr. RAICHLE: Skipping to line 24:

"Q. That gets back to this transportation saving?

"A. Yes.

"Q. The newspapers in the South are presently deprived of the saving that would result from doing business
784 with the Sylacauga plant, is that right?

"A. If they—

"Q. Is that right?

"A. I am trying to answer. If they are to be given the benefit of those savings, they are being deprived of those savings. They were deprived of them up to the time of the order. They subsequently have been deprived of them because there had been no action by Greater Buffalo or Dixie Color on the order."

Mr. RAICHLE: Page 104:

"Q. If the Sylacauga plant operated, it would also have to pass on the saving in the same way to be competitive with you, isn't that right, as a practical workaday fact of life?

"A. It would depend on the location. If, for instance, it had a transportation cost from Birmingham of, let's say, fifty cents per one hundred weight, whereas from Wilkes Barre it was \$1.25 per hundred weight, there is a 75 cent saving. If he let Birmingham get the full benefit of that seventy-five cents,

then Birmingham would, of course, save that sum out of that cost. But you say he would have to do that in order to protect his transportation rates as against what I could get. Well, suppose mine were one dollar from Newport News and they would save seventy-five cents, I would still be higher than he is, and so there would be no competitive compulsion on the part of him giving me an order. That all depends—it is rather involved—but that all depends on the degree of savings, the amount of savings, the distances involved, and so forth."

Mr. RAICHLE: Page 106, line 11:

"Q. Mr. Smith is walking around with our figures down there and conferring with you about them.

"A. He never asked you for those figures.

"Q. You gave them to him. Anyway, it is a competitive advantage to have them, isn't it?

"A. Oh, yes, competitive advantage."

Mr. RAICHLE: Over on page 107:

"Q. Are you the agent for Southern Color or is Southern Color subcontractors for you, which is it?

"A. It is all semantics. I am their exclusive agent. That is the way I have always described myself. In that sense, I am an agent."

Mr. RAICHLE: Over on page 108:

"Q. When you were in the Department of Justice the other day, did you meet the Union representatives of the International Color Printing there?

"A. Yes."

Mr. RAICHLE: Page 109:

"Q. Did you inform the Union representatives of International Color Printing that you were taking business away from International Color Printing?

"A. No, sir.

"Q. Did anybody so inform them in your presence?

"A. No, sir."

Mr. RAICHLE: Page 111:

"Q. Who is Jack Nealands?

"A. Jack Nealands is a man who was christened George Nealands. He is a first cousin of mine, and I understand he used to be with the Chamber of Commerce in Sylacauga and now he is in charge of some sort of commission to get new industries for Sylacauga. A very nice young man. Not so young any more.

787 "Q. Did you ever tell him this plant would open?

"A. No, I have no recollection of that. I haven't talked to him."

Mr. RAICHLE: Page 112:

"Q. Did you tell him that it never opened under the ownership of Greater Buffalo?

"A. As I said this morning, that would have been a positively absurd statement for any intelligent man to make.

"Q. Is that what makes you think you didn't make it?

"A. I am sure I didn't make it.

"Q. In your solicitations, you have called on every paper in the area, haven't you?

"A. Over a period of years, I have called on nearly all of them, sir. I wouldn't say definitely I saw all of them. I remember, in my last deposition I excluded Louisville. There is one paper I never called on."

Mr. RAICHLE: Further down on page 113:

788 "Q. So far as you know, was Mr. Smith's operation an efficient one?

"A. Yes, sir.

"Q. As efficient as Greater Buffalo Press, would you say?

"A. I have never witnessed the operation of the Greater Buffalo Press, but considering their product and so on, I would say that Southern Colorprint is just as efficient. They may not have some of the gimmicks that Greater Buffalo has. On the other hand, Greater Buffalo may not have some of the gimmicks they have."

Mr. RAICHLE: Page 114:

"Q. You know of no reason why Mr. Smith couldn't successfully compete?

"A. No. I know of no reason.

"Q. With Sylacauga?

"A. With Sylacauga."

Mr. RAICHLE: Page 115:

"Q. By the way, Southern Color, Mr. Smith's outfit, purchased a press from Hearst, didn't it?

"A. Yes, that is in the previous deposition.

"Q. That doesn't condemn it, does it?

"A. Condemn? What, Mr. Smith, Southern Color,
Hearst Press, or Hearst?

"Q. No the subject matter. When was that purchase
made?

"A. I would say about a year and a half to two years ago."

Mr. RAICHLE: Line 18:

"Q. Do you know what Mr. Smith paid for it?

"A. Yes, sir.

"Q. What did he pay?

"A. \$35,000, I understand. He spent a good deal on it in re-building it and making changes in it, a good deal more than it cost.

"Q. It is essential to his operation; helpful to his operation?

"A. Yes, it is helpful to his operation."

(Thereupon the balance of Jack R. Hornady's deposition was copied into the record as follows; starting at Page 92:)

"Q. You were served with a subpoena as found by the Court. You had made representations that you had not been subpoenaed. You had indeed been subpoenaed?

"Mr. LAYTON: Don't listen to the speeches made by this gentleman. Let the record show that Mr. Hornady is here under oath and testifying. If you do not care to continue with the deposition, that is your prerogative.

"Mr. RAICHLE: I am not going to have you interrupt it.

"Mr. LAYTON: I will interrupt any time I see fit.

"Mr. FELDMAN: Can we have the last question read and then could you note your objection for the record and then proceed?

"(The record was read back by reporter.)

"Q. Is that right or wrong?

"A. There are elements of time involved. Has that been since I was associated with the project?

"Q. Answer that part, if you will.

"A. Since I was associated with the project, we haven't had any substantial losses.

"Q. You have no basis for complaint, have you?

"A. No, not about what they had taken away from us.

791 "Q. Just one, single complaint to make about International Color Printing or Greater Buffalo Press since

you left King Features and went with Southern Colorprinting? Yes or no, please.

"Mr. LAYTON: I would like to ask at this point what kind of complaint the question is directed toward?

"Mr. RAICHLE: I am going to leave the question the way it is and press it.

"The WITNESS: Read it back, please.

"(The pending question was read by the reporter.)

"A. I had a number of complaints regarding the activities of agents of Greater Buffalo Press and International Color Printing.

"Q. Do you mean King Features?

"A. King Features, NEA.

"Q. Can you tell me one thing that Greater Buffalo Press did or International Color Printing did, or Dixie Color Printing did of which you complained?

"A. Nothing, except what they did, sir.

"Q. By 'the agent', let's particularize, you mean King Features?

"A. King Features and NEA.

792 "Q. When you say 'the agent', you have previously told me you stood on the testimony you gave last time and the last time you said that International Color Printing was a subcontractor of King Features, didn't you?

"A. I may have. I don't know.

"Q. Was that the truth?

"Mr. LAYTON: I object to the characterization of the previous testimony.

"A. I remember saying at the time that when an organization or a representative goes in to see somebody to sell him something—

"Q. That isn't responsive to my question.

"A. It is on the same subject.

"Q. When you said before that International Color Printing was a subcontractor of King Features, was that the fact?

"A. I am not sure—

"Mr. LAYTON: At what particular time are you referring to this testimony—his previous testimony a year and a half ago or this morning?

"Mr. RAICHLE: When he testified last time, as he has said, that he reaffirms it now.

793 "Mr. LAYTON: Would you have any objection to the witness refreshing his recollection?

"Mr. RAICHLE: You mean if I can prove it he will admit it?

"Mr. LAYTON: I am not making any such statement.

"Mr. RAICHLE: I want him to answer the question.

"A. I think it is fairly simple. You make a contract and do the work or part of the work. You have a subcontractor—

"Q. I am asking if what you said before on the subject is the truth?

"A. I would say that it was—International was a subcontractor of King Feature Syndicate.

"Q. Save for anything that King Features might have done or the NEA might have done, can you tell me one, single complaint that you have of the conduct or any act or deed on the part of International Color Printing or Greater Buffalo Press?

"A. That is a long period of time.

"Q. Since you went with that Southern Colorprinting?

"A. That's been nearly seven years.

794 "Mr. RAICHLE: Let the record show the witness is taking some time to answer.

"Q. Tell me what is the complaint?

"A. I've got a perfect right to take time to answer. I want to tell the truth. I've got to have time to recollect, sir.

"Q. Tell me the complaint, what is it?

"A. Wouldn't it be a good idea for you to calm down and let's conduct this examination the way you did this morning.

"Q. Don't lecture me.

"A. I will lecture you if you lecture me.

"Q. As you sit there now, you have not had time enough to recollect any complaint which you have to make against these two companies?

"A. Because you have been constantly interrupting my reflection.

"Q. From you uninterrupted reflection, in the quiet and peace of the consolation of your counsel sitting there to help you, you can tell me.

"A. Give me a little uninterrupted to tell you.

"Q. All right.

"A. I was not conscious of my own knowledge, prior to the filing of this case, that Greater Buffalo was engaged in 795 any activities that were hurtful to me and at the same time unfair.

"Q. Since you went with Southern Colorprinting—if you quarrel about that expression—

"A. Atlantic Features.

"Q. Since you have been seeking printing business for Southern Colorprinting Company, some time in 1956, I think you said—

"A. Yes, sir.

"Q. Can you tell me a single act or deed on the part of the Greater Buffalo Press, International Color Printing or Dixie Color Printing, of which you complain or which you would even criticize?

"A. No, I don't recall anything, sir.

"Q. Prior to the time that the government sought this restraint against these defendants, did you discuss with the Department of Justice or any representative of the Department of Justice the matter of obtaining such a restraint?

"A. Would you repeat the question, please?

(The pending question was read by reporter.)

"A. By restraint, I assume you mean not permitting the opening of the Sylacauga plant? No, sir, I did not discuss that.

796 "Q. Did you ask for such a restraint?

"A. No, sir.

"Q. Do you ask for it now?

"A. No, sir.

"Q. Do you know of any reason why it should be continued so far as you are concerned?

"A. Just as I said this morning, from a predatory—if there were no predatory actions to be feared that would cause me to lose some of my clients, the answer is that I have no legitimate complaint. I wouldn't like—I mean it isn't a question of my likes or dislikes and I don't think I have any right to object to anything, but that was my fear.

"Q. If the Sylacauga plant did not sell below cost and competed fairly with you on that basis, you would have no objection to their operation, would you?

"A. As I said a while ago, I am in no position to object or not object. If you ask me would I like it, naturally, anybody likes less competition, but they do not expect it, naturally.

"Q. In other words, you can think of no basis on which you are entitled to freedom of competition?

"A. With the reservation about the predatory—
797 possible predatory action.

"Q. Assume fair, honest, decent, good faith, hard com-

dition, do you know of any reason you are entitled to be pro-
tected against that?

"A. With that assumption I don't know of any reason.

"Q. Can you tell me anything that Greater Buffalo Press, International Color Printing or Dixie Color Printing has done to date during the time that you have been with Southern Colorprinting or Southern Printing on their behalf, there haven't been honest, decent, fair competition?

"Mr. LAYTON: I think you asked him previously whether he had anything to complain about and I think he answered it.

"Mr. RAICHLE: He answered no.

"A. In answer to this last question, there is a letter in the records from Mr. Koessler to his representative Mr. Hershiser, in which Mr. Koessler instructed Mr. Hershiser to go after Newport News. He made a suggestion that one of the means of going after Newport News, that may be these eight-page customers of Newport News could be reduced to six pages, which is difficult for Newport News to print, or the twelve pages could be reduced to ten pages, which Newport News could not print, and, in other words, he was instructing his employees to try to diminish the market for him to have an advantage over me.

"Q. Is that your only complaint?

"A. That is the only one I think of, sir.

"Q. You have had months, hours on end with Mr. Feldman and the rest to think of them, haven't you?

"A. I have had considerable time.

"Q. And that is the best or the worst, depending on the point of view, that you can come up with on that subject; is that right?

"A. I have stated what I have.

"Mr. LAYTON: I will object to the form of that question.

"Q. That isn't very different from Koessler trying to sell a Cadillac against your Ford, is it?

"Mr. LAYTON: Is that a question?

Mr. RAICHLE: Yes, that is a question. What did you think it was?

"Mr. LAYTON: It sounded like another speech.

799 "The WITNESS: I think it is a pretty loaded question.

By Mr. RAICHLE:

"Q. Aren't you loaded?

"A. Loaded with what?

"Q. Information.

"A. No more so than the average person, sir.

"Q. I am simply seeking your answers. Don't be offended.

"A. You have interrupted the answer that I was going to make about the Ford and Cadillac. Well, you don't say that Mr. Koessler's product compares to my product like a Cadillac compares to a Ford. They are of equal quality, size, and so forth, as Mr. Koessler's products, and I think that that was a sort of a designed question for you to make that comparison.

"Q. You thought the comparison was a poor one?

"A. Yes, that's right.

"Q. Your product and Koessler's product you say are the same?

"A. In some cases ours are better; in some cases his are probably better. I don't know. They look about the same. They are not enough different to make the reader of a newspaper 800 or ordinarily the publisher of a newspaper to see any great difference in them.

"Q. They are competitive?

"A. That's right.

"Q. Competitive in point of quality, competitive in point of price, competitive in point of service?

"A. Competitive in quality and service. In some cases I can give better service than Mr. Koessler because I am closer to them. In some cases he doubtless can do the same. I do think that because of the fact that I don't print nearly as many papers as he does, that I can probably give a little more individual service than he can. All of that is not of great significance. As to prices, they are generally competitive.

"Q. When you say you are nearer to them in certain instances, you mean the Southern Color printing plant is nearer?

"A. That is what I mean, yes.

"Q. That gets back to this transportation saving?

"A. Yes.

"Q. The newspapers in the South are presently deprived 801 of the saving that would result from doing business with the Sylacauga plant; is that right?

"A. If they—

"Q. Is that right?

"A. I am trying to answer. If they are to be given the benefit of those savings, they are being deprived of those savings. They were deprived of them up to the time of the order. They subsequently have been deprived of them because there had

been no action by Greater Buffalo or Dixie Color on the order.

"Q. Do you pass on the transportation saving to the customer?

"Mr. LAYTON: Pardon me. I don't understand the question. Read it back, please.

"(The pending question was read by the reporter.)

"Q. In this area that we are talking about?

"A. In most of my—in all of my contracts, I contract FOB Newport News. The publisher pays whatever the transportation is. If he is paying the transportation from Wilkes Barre, and there is a saving from Newport News, he gains the benefit of that.

802 "Q. If the Sylacauga plant operated, it would also have to pass on the saving in the same way to be competitive with you, isn't that right, as a practical workaday fact of life?

"A. It would depend on the location. If, for instance, it had a transportation cost from Birmingham of, let's say, fifty cents per one hundred weight, whereas from Wilkes Barre it was \$1.25 per hundred weight, there is a 75 cents saving. If he let Birmingham get the full benefit of that seventy-five cents, then Birmingham would, of course, save that sum out of that cost. But you say he would have to do that in order to protect his transportation rates as against what I could get. Well, suppose mine were one dollar from Newport News and they would save seventy-five cents, I would still be higher than he is, and so there would be no competitive compulsion on the part of him giving me an order. That all depends—it is rather involved—but that all depends on the degree of savings, the amount of savings, the distances involved, and so forth.

803 "Q. Who gets the business down there, if the Sylacauga plant is operating? It is going to depend very much on the freight savings; isn't that so?

"A. Yes, sir, I think so, providing costs are regular, competitive.

"Q. This business that you have taken from International Color Printing, this volume that you told us about this morning, including that which you took the other day, you didn't take that below cost, did you?

"A. No, sir.

"Q. You took it at a profit?

"A. Yes, sir.

"Q. You have taken all your business at a profit?

"A. Yes.

"Q. All the printing business for Southern Colorprinting Inc.?

"A. That is correct, sir.

"Q. In each of these instances where you took the business from International Color Print?

"A. Yes, I have always had some profit.

"Q. Are you talking profit for Southern Colorprint?

804 "A. I am talking profit for Atlantic. I assume that in the rates quoted me by Mr. Robert Smith, the manager of the Southern Colorprinting plant, that he is making a profit.

"Q. So far as you know, he is?

"A. Yes.

"Q. What does he charge you average per thousand for your fours?

"A. I don't think that I need to give up the competitive information as to my cost.

"Q. Mr. Smith is walking around with our figures down there and conferring with you about them.

"A. He never asked you for those figures.

"Q. He asked Mr. Feldman for them, didn't he?

"Mr. LAYTON: I don't think this is too germane.

"Mr. FELDMAN: I am going to object to that question.

"Q. You gave them to him. Anyway it is a competitive advantage to have them, isn't it?

"A. Oh, yes, competitive advantage.

"Q. One which you now enjoy under this order?

"A. I don't have them.

"Q. Mr. Smith has them, and how; right?

805 "A. I don't know how much he's got or whether they are the prices his newspaper pays or whether they are the prices the agents pay, or King Features, NEA pay to Mr. Koessler.

"Q. Are you the agent for Southern Color or is Southern Color subcontractors for you; which is it?

"A. It is all semantics. I am their exclusive agent. That is the way I have always described myself. In that sense, I am an agent.

"Q. Have you read these contracts put in evidence here, or been marked for identification?

"A. I have read all but the standardized fine type. I know about what they contain.

"Q. When you were in the Department of Justice the other day, did you meet the Union representatives of the International Color Printing there?

"A. Yes.

"Q. Who by name did you meet?

"A. I don't know any of their names.

"Q. You were an executive in the Department of Justice talking to our Union representatives?

"A. I said hello, that sort of thing. I didn't have any sort of conference with them.

"Q. You did not?

"A. No.

"Q. Who introduced you to them?

"A. I had met them in Buffalo.

"Q. Who introduced you on this occasion or who got 806 you together? Mr. Feldman?

"Mr. LAYTON: I don't think there has been any testimony that they were introduced.

"Q. You were talking to them, you said?

"A. I had seen them before. I ran into them, said hello and so on.

"Q. What were they doing there?

"A. I don't know. I didn't ask them. I assume they were there in connection with this case, just as they were in Buffalo in connection with this case.

"Q. What day was this that the Union were down there at the same day you were?

"A. The same day I was there. We tried to figure that out this morning, I believe it was Tuesday or Wednesday of last week.

"Q. Did you inform the Union representatives of International Color Printing that you were taking business away from International Color Printing?

"A. No, sir.

"Q. Did anybody so inform them in your presence?

"A. No, sir.

"Q. Were they there for the purpose of being lined up 807 in opposition to the opening of the Sylacauga plant?

"Mr. LAYTON: I object to the nature of that question.

"Mr. FELDMAN: I object to the form of the question.

"Q. Do you know why they were there?

"A. They did not tell me, Mr. Feldman did not tell me, no one told me why they were there.

"Q. You recognized them from having seen them before did you?

"A. That's right.

"Q. Who by name was there?

"A. I have said I don't know.

"Q. How many were there?

"A. Three or four.

"Q. Did you know they were going to be there before you arrived?

"A. No, sir.

"Q. Did they stay after you left?

"A. They were there when I left Mr. Feldman's office after lunch to go back to the library, but they were gone when I finished in the library.

"Q. Who else was there?

808 "A. Mr. Lawson.

"Q. Who is he?

"A. He is a mechanical superintendent of Southern Colorprint and Mr. Smith came in during the afternoon.

"Q. What was Lawson doing?

"A. He was there talking to Mr. Feldman.

"Q. About these figures, these projections?

"A. I didn't hear his conversation because he was talking to Mr. Feldman while I was down the library reading my deposition.

"Q. Who is Jack Nealands?

"A. Jack Nealands is a man who was christened George Nealands. He is a first cousin of mine, and I understand he used to be with the Chamber of Commerce in Sylacauga and now he is in charge of some sort of commission to get new industries for Sylacauga. A very nice young man. Not so young any more.

"Q. Did you ever tell him this plant would open?

809 "A. No, I have no recollection of that. I haven't talked to him.

"Q. Did you ever discuss the opening of the plant with him?

"A. It seemed to me that I was going through Sylacauga one time and looked him up and he said, 'They are working on it, we hope they will be open soon.'

"Q. What did you say, 'I hope so too'?

"A. No, sir, I can't say that I said that.

"Q. You went through the plant, didn't you?

"A. I passed outside of it.

"Q. You were not above looking at it, were you?

"A. No, I looked at it, but I didn't go look in the plant. I looked at it, the building is there.

"Q. Did you tell him that it never opened under the ownership of Greater Buffalo?

"A. As I said this morning, that would have been a positively absurd statement for any intelligent man to make.

"Q. Is that what makes you think you didn't make it?

"A. I am sure I didn't make it.

"Q. In your solicitations, you have called on every paper in the area, haven't you?

"A. Over a period of years, I have called on nearly all of them, sir. I wouldn't say definitely I saw all of them. I remember, in my last deposition, I excluded Louisville. There 810 is one paper I never called on.

"Q. With that exception, you have solicited all of them?

"A. And perhaps a few smaller papers I haven't gotten around to, over the period of my employment by Atlantic.

"Q. So far as you know, was Mr. Smith's operation an efficient one?

"A. Yes, sir.

"Q. As efficient as Greater Buffalo Press, would you say?

"A. I have never witnessed the operation of the Greater Buffalo Press, but considering their product and so on, I would say that Southern Colorprint is just as efficient. They may not have some of the gimmicks that Greater Buffalo has. On the other hand, Greater Buffalo may not have some of the gimmicks they have.

"Q. Would you say the same thing about International Color Printing?

"A. Comparatively, yes, the same.

"Q. I mean, Mr. Smith's operation there at Southern Color is as efficient as the International Color?

"A. As far as I can tell from the distance.

811 "Q. So far as you know, based on your experience, his efficiency would certainly compare with that of the operation of the Sylacauga plant?

"A. His ability to turn out a good finished product.

"Q. At a competitive price?

"A. At a competitive price.

"Q. Would compare favorably with any operation at Sylacauga, wouldn't it?

"A. Now you switched from Wilkes-Barre, Buffalo, to Sylacauga. I don't think I can speculate as to what operation at Sylacauga is going to be.

"Q. You know of no reason why Mr. Smith couldn't successfully compete?

"A. No, I know of no reason.

"Q. With Sylacauga?

"A. With Sylacauga.

"Q. By the way, Southern Color, Mr. Smith's outfit, purchased a press from Hearst, didn't it?

"A. Yes, that is in the previous deposition.

"Q. That doesn't condemn it, does it?

"A. Condemn? What, Mr. Smith, Southern Color, Hearst Press, or Hearst?

"Q. No, the subject matter. When was that purchase made?

812 "A. I would say about a year and a half to two years ago.

"Q. Since the lawsuit has been started?

"A. Yes, sir, I think so.

"Q. Is that press in use?

"A. Yes, sir.

"Q. Do you know what Mr. Smith paid for it?

"A. Yes, sir.

"Q. What did he pay?

"A. \$35,000, I understand. He spent a good deal on it in rebuilding it and making changes in it, a good deal more than it cost.

"Q. It is essential to his operation; helpful to his operation?

"A. Yes, it is helpful to his operation.

"Mr. RAICHLE: That is all.

"Mr. FELDMAN: I would like to start tomorrow.

"Mr. LAYTON: Off the record.

"(Discussion off the record.)

10:30. "Mr. LAYTON: We will adjourn until tomorrow morning at

"(Whereupon, at 3:10 p.m., the deposition was adjourned to Friday, December 7, 1962, at 10:30 a.m., same place.)"

Mr. RAICHLE: Now, the next deposition you will be 813 relieved to know is somewhat shorter. I say the next deposition I mean the next session had on the following

day, I understand from what Mr. Feldman said, he would rather point his examination up or what he considers the highlights or important parts of it by brief. I would like to quickly call your attention to one or two things in my redirect examination. Page 173, please, line 16:

"Mr. Hornady, you speak of no guarantee or counsel speaks of no guarantee—no assurance that the freight savings which we have been talking about, the transportation savings in the Southeastern area would be affected if Sylacauga opened. Your competition would require them to be passed on to the newspaper. You are doing it, aren't you?"

814 "A. In all cases, yes.

"A. Whoever the operator of Sylacauga was couldn't compete with you unless he did the same thing effectively?

"A. As long as I am in business, I would be to some extent and in some cases a deterrent to any higher rates that Sylacauga plant might charge.

"Q. Who gave you this information about Macon that you were giving here?

"A. You mean about the transportation?

"Q. Yes. Who, by name?

"A. Mr. Bert Strubel, the general manager.

"Q. When?

"A. About the time I obtained this contract.

Q. When was that, if you will refresh my recollection?

815 "A. The contract is dated the 11th of June, so it must have been—

"Q. Of what year?

"A. 1962. So it must have been early June or the latter part of May.

"Q. What you know about that is hearsay, something he told you and you heard?

"A. That is correct, sir.

"Q. I will try to adopt your words so we don't get into any unnecessary argument about phrasing these things.

"You said that the tie-ins and the reduction of prices under certain circumstances, and these other matters and things which you characterized as predatory practices, were not engaged in the course of ethical solicitation of business. Do you remember so stating?

"A. Yes.

816 "Those are the things which you have done all your life, isn't that so?

"A. It is not, sir. I have always conducted myself on an ethical basis.

"Q. You conducted tie-in sales, so you claimed, didn't you when you were with Hearst?

"A. I did on instructions.

"Q. But you did it, didn't you?

"A. Yes, I did it. Please don't try to intimidate me by your tone of voice, counsel."

Mr. RAICHLE: Now, let's see, page 176:

"Q. After you went with Southern Colorprinting, you continued this business of selling comic features and printing, didn't you?

"A. Yes, I was selling features for the Hall syndicate.

817 "Q. You testified in your previous deposition that what you were doing individually was exactly what Hearst had been doing, isn't that true?

"A. In the sense that that was the sort of business I was engaged in.

"Q. You have reduced prices to meet competition, haven't you?

"A. Yes, sir.

"Q. Have you reduced prices to eliminate competition, haven't you?

"Mr. LAYTON: During what period of time?

"Q. Since you have been with Southern Colorprinting.

"A. You mean eliminate competition in the sense of getting rid of the competition altogether or in meeting the competition with a specific instance?

"Q. Both.

"A. I will never try to put King Feature Syndicate or Greater Buffalo or NEA out of business.

818 "Q. What about taking all that business in the field that Eastern Color had?

"A. That is not putting Eastern Color out of business. Eastern Color I still think is next—

"Q. Would you have—

"A. I didn't finish my previous answer.

"Q. Please.

"A. I did not. I was not attempting to put Eastern Color out of business and I did not come anywhere near it. I just eliminated their business in Greensboro, North Carolina. They still do a tremendous amount of printing in the eastern states.

"Q. But not in the southeastern states, the area with which we are concerned?"

"A. That is correct, sir.

"Q. Let me see if despite our little personal clash here we can get something else. You say this Court order of 819 June 22, 1962 was not entered for your benefit; is that right?

"A. No, sir. This whole case.

"Q. Was it entered for your benefit?

"A. Not that I know of. I wouldn't assume so.

"Q. Was it entered for the benefit of the newspaper publishers, the consumers in this industry?

"A. No, sir, I think it was entered for—

"Q. Please let me ask the question."

Mr. RAICHLE: Down at the bottom of page 181, line 24:

"Q. If you did not have the competition of Sylacauga in the areas where you are nearer and in closer proximity than International up in Wilkes Barre, Pennsylvania, you would have the competitive advantage which you swore to yesterday, isn't that so.

820 "A. It is the same sort of competitive advantage that Wilkes Barre would have and Dunkirk would have in soliciting business in the eastern part of the United States."

Mr. RAICHLE: Down at Line 19:

"Q. Do you claim you did not have a competitive advantage; let's take it that way.

"A. I haven't claimed anything."

Mr. RAICHLE: Down at the bottom of 192:

"Q. Can you service Birmingham if Sylacauga is operating?

"A. I could print for them, if that is what you mean, sir.

"Q. If Sylacauga was operating and transportation costs were passed on to the customer, then certainly in Birmingham, in Chattanooga, Huntsville and in Montgomery, there would be substantial savings to the publisher; isn't that true?

821 "A. If he were given the benefit of the savings and the price he is paying would not increase and so on, subject to those qualifications.

"Q. Assuming that all of the savings were passed down to him, the savings would be substantial; isn't that true?

"A. Yes, sir, they would be fairly substantial, I think.

"Q. As long as this order continues to operate, those savings cannot be effective; isn't that true?

"A. Those savings which are based on the assumption that they would get them, could not be effective.

"Q. Do you know of any good reason why the publishers in those towns which I have just read should pay a higher price through a denial of transportation savings so that you can operate without the competition of Sylacauga?

822 "A. No, sir. I don't know of any reason why they should have that attitude."

Mr. RAICHLE: Well, with the understanding that the deposition will be completed with the portions illustrated specifically at this time to call to your Honor's attention, I think Mr. Feldman has something.

Mr. FELDMAN: In our brief we shall allude to the portions of the depositions we think are important. I would like to point out certain things in regard to the cross-examination of Mr. Hornady which we respectfully ask your Honor to bear in mind. Mr. Hornady is basically telling the truth of what he felt regarding the Sylacauga's plant's opening. His opposition is based upon his testimony that all the extra runs he received were gotten through fair, open, clear competition and any 823 implication that these runs were not taken in that way we think was dispelled by certain portions of the deposition. In addition to that, certain other factors have been brought up. One, these projection figures. I think the cross-examination will reveal he never got them in any illegal way or never sought to use them for any purpose which would be detrimental to his competitors. In addition, there was a question in regard to his meeting union officials. The testimony, it will be noted, shows he went on his way and had no discussions with him in regard to the purchase of the press. That was on

824 April 3, 1961. With that I have no further comments with regard to Hornaday's deposition.

Mr. CLIMENKO: May I make a brief comment regarding what Mr. Feldman said, what Mr. Feldman has said, that the competition which Mr. Hornady, the beneficiary apparently of this order, obtained this increase in business was fair competition. Now, if your Honor please, I think that since that statement has been made, it ought to be measured with an understanding of the background and what it means and what the impact of this statement is in connection with Hearst. Our printing for all of these particular contracts which have swelled the size of Mr. Hornady four hundred per cent in the

eighteen months since the entry of his order, his gross
825 has been swelled at our expense and his gross has been
swelled by the process of his being able to take our cus-
tomers not by fair competition but in consequence of his ob-
taining a geographical advantage denied us and denied us in
consequence of the fact that those runs under this order could
not be moved out of Wilkes Barre, so that it is a questionable
statement, it seems to me. This is a complicated case, but it is
an over-simplification of the facts for Mr. Feldman to say to
your Honor that Mr. Hornady obtained the runs, taking them
away from King and the rest through fair competition. He got

them in consequence of a number of factors; one, as a
826 person who had formerly worked with us, he had a com-
petitive factor of knowing what our price was, a factor
your Honor heard reported in this deposition. Starting from the
fact that he had moved away from us into an arrangement
which to use a euphonism was not quite an extension of his
obligation of loyalty, starting from that, starting from the
knowledge that he had obtained as a former employee, he then
proceeds under the cover of the order of this Court to take away
from us that which we cannot protect from his deprivations by
reason of this very order, because your Honor has said that this
business had to be frozen in Wilkes Barre for the benefit of the
Wilkes Barre unions. Now, if your Honor please, the purpose

of the order is dispelled by the fact that he takes it
827 and he obtained it against the interest of Wilkes Barre
and obtains it only because of this transportation ad-
vantage which we are unable to neutralize. We can't compete
with him because we are fettered by this order of this Court.
Now, if your Honor please, the question of the ultimate fair-
ness of this order, the question of the ultimate issues of this
case project very complicated issues, I know, but I have sat here
for several days as your Honor knows, throughout these hear-
ings and we have exercised, I think, a commendable reserve
about not intruding into these hearings, because we were not

offering testimony and not for a reason that is known
828 to everybody concerned with this case, but it seems hard
for me to sit here and to hear it said that this was fair
competition when we know it is not fair competition. It is not
competition at all; it is the accusation of our business by any-
one who by any rules of proper conduct should have been in a
position to take it. Secondly, it is in a consequence of exporta-
tion of this court. I am sorry, but I felt compelled to respond.

(The continued deposition of Jack R. Hornady reads as follows:)

829 "United States District Court, Western District of New York

"Civil Action No. 9004

"UNITED STATES OF AMERICA, PLAINTIFF

"against

"GREATER BUFFALO PRESS, INCORPORATED; THE HEARST CORPORATION; NEWSPAPER ENTERPRISE ASSOCIATION, INC.; THE INTERNATIONAL COLOR PRINTING COMPANY, SOUTHWEST COLOR PRINTING CORPORATION; AND DIXIE COLOR PRINTING CORPORATION, DEFENDANTS

"Continued deposition of JACK R. HORNADY, taken on behalf of the defendants Greater Buffalo Press, Incorporated, International Color Printing Corporation and Dixie Color Printing Corporation, pursuant to adjournment, at the offices of Gilbert & Segall, Esqs., 405 Park Avenue, New York, New York, on Friday, December 7, 1962, at ten-thirty o'clock in the forenoon, before George Abraham, a Certified Shorthand Reporter

830 and Notary Public within and for the State of New York.

* * * *

"Appearances: Raymond M. Carlson, Esq., attorney for plaintiff, c/o The United States Attorney, U.S. Court House, Buffalo, New York, by Elliott H. Feldman, Esq., of counsel.

"Raichle, Moore, Banning & Weiss, Esqs., attorneys for defendants Greater Buffalo Press, Incorporated; International Color Printing Company, Southwest Color Printing Corporation and Dixie Color Printing Corporation, 10 Lafayette Square, Buffalo 3, New York, by Frank G. Raichle, Esq., of counsel.

"Gallop, Climenko & Gould, Esqs., attorneys for The Hearst Corporation, 360 Lexington Avenue, New York, New York, by Leo Schwartz, Esq., of counsel.

831 "Gilbert & Segal, Esqs., attorneys for the witness, 405 Park Avenue, New York, New York, by Robert Layton, Esq., and Robert E. Young, Esq., of counsel.

"Baker, Hostetler & Patterson, Esqs., attorneys for defendant Newspaper Enterprise Association, Inc., 1956 Union Com-

more Building, Cleveland 14, Ohio, by *Richard F. Stevens*,
Esq., of counsel.

"*Lord, Day & Lord, Esqs.*, attorneys for King Features,
25 Broadway, New York, New York, by *Robert Haynes, Esq.*,
of counsel.

832 "JACK R. HORNADY, having been previously sworn,
resumed and testified further as follows:

"CROSS EXAMINATION

"By Mr. FELDMAN:

"Q. Mr. Hornady, yesterday some questions came up in
regard to the travels you made subsequent to your operation.

"When you traveled subsequent to your operation, were you
under a physician's orders or advice?

"A. Yes, sir. He told me not to get myself in any stressful
situations and not to work but a few hours a day.

"Q. The publishers you called upon, were these people you
had known sometime in the past?

"A. Oh, yes, sir. Most of them I have known for a long time.

"Q. When you spoke with them, were you under any strain?

"A. Oh, no.

"Q. Did your physician advise you in any way in regard to
your health as to testifying in this litigation?

"A. No, it never came up with him before I left. I guess that
is what—

833 "Q. At any time?

"A. No, I haven't talked with him. My son called him
and told him about this thing and he said it would be harmful
to me.

"Q. He advised you, through your son, that it would be
harmful for you to testify?

"A. Yes, sir, that I was not in a condition to testify.

"Q. Do you find any difficulty in testifying at a deposition
and in talking to publishers whom you have testified you have
known in the past?

"A. There is quite a difference, sir. It is a relaxed sort of
thing, I visit with these old friends. We talk about things going
on. I show them a comic strip or I say, 'Well, how much has
your contract got to go on your printing?'

"I can end it and leave any time I want to. As compared to
that, answering questions hour after hour very carefully in a

deposition, trying to remember things that happened a long time ago, is quite a strain as anyone knows.

"Q. Mr. Hornady, I believe you testified yesterday that when you first came and spoke with me after this deposition 834 was noted, you did not come to see me at my invitation; is that correct, sir?

"A. No, sir. I just dropped in on you.

"Q. What were the circumstances in which you came to see me again, sir?

"A. I had been to the Washington Star and the Washington Post and then I took a cab and went by your office. I got there around noon, 12:30, something like that. You were leaving for lunch.

"I said 'Hello, how are things going?' and that sort of thing.

"Q. At that time, did I give you any legal advice or instructions as to your appearing at this deposition?

"A. No, sir.

"Q. Do you recall what, if anything, I said to you in regard to my intentions as to your deposition before you left?

"A. I think you said, 'I expect to see you Friday in New York at your deposition.'

"I said there was some question whether my deposition would go on Friday, that my lawyers were trying to get it postponed.

"Q. What, if anything, did I tell you?

"A. You said, 'well, you better call your lawyers 835 about that.'

"I told you I was in constant touch with my lawyers.

"Q. In the past, in regard to any time you testified in this case, have I ever given you any legal advice or instructions; this morning?

"A. No, sir. You backed away any time I would ask a question along those lines.

"Q. I believe you testified yesterday, Mr. Hornady, that you saw in the corridor at the Department of Justice certain people who are in the employ of International; is that correct, sir?

"A. I saw them in your office. You know, I went to lunch and I came back. I did not leave this deposition down in the library. I left it in your office.

"I came back to your office to pick up the deposition and to resume reading it, and that is when I saw these gentlemen from Wilkes-Barre.

"Q. Any time when you saw me in Washington, did you ever discuss this litigation with these employees in my presence or in the presence of any attorney of the Department of Justice, sir?

"A. No, sir. As I said yesterday, I just saw these fellows and in that few minutes, just said hello to them and asked them how things were going. I was surprised to see them there.

836 "Q. Mr. Hornady, you testified, I believe, that the first time you saw the so-called projected cost figures submitted by the defendants as to the Sylacauga plant, was when you came to visit me in Washington and to read your deposition; is that correct, sir?

"A. I think there was some confusion in my recollection yesterday about whether I first saw them from Mr. Smith and whether I first saw them from you.

"Last night Mr. Smith and I talked on the telephone and he said that—

"Q. Never mind what he said. What is your present recollection?

"A. My present recollection is that while I saw down in the library, you came by—reading my deposition—you came by and handed me some papers and I looked at them, and that was probably where I saw this sheet of figures, but I didn't have any time to really go over them because you snatched the thing away from me again in about two or three minutes.

"Q. Are you through, sir?

"A. You said you needed it for something else.

837 "Q. Mr. Hornady, I now show you the outstanding motion and affidavits, or at least a copy of the same, which is a record in this case, and ask you whether that was a copy of the papers you saw at that time, sir.

"A. Yes, sir, I think so. It was a thing covered like this and it had affidavits in there from Mr. Hammond and Mr. Raichle.

"Q. Was that the time when you saw the so-called projected cost figures?

"A. I believe it was, yes, sir.

"Mr. RAICHLE: Do you want the record to show what it was you showed him?

"Mr. FELDMAN: It is the motion and affidavits brought by the defendants to modify the June 22nd order of this
838 Court.

"Q. Mr. Hornady, I believe you testified yesterday

that you did not see the motion papers that are now pending in this action; is that correct sir?

"A. That must have been a mistake because if that is a motion—but I didn't know what that was at the time. It was just some papers.

"Q. Mr. Hornady, is it your present recollection that you did see the motion papers, the papers that I just showed you?

"A. I saw papers like that.

"Q. How long did you have them in your possession, sir?

"A. I would say it was less than five minutes.

"Q. I believe you testified yesterday, sir, that Atlantic Features has some thirteen newspaper stockholders; is that correct, sir?

"A. Thirteen newspapers and two others, including myself.

839 "Q. In the past have you been required to report to these stockholders as to the activities of Atlantic Features?

"A. Sure, I have to give them a report.

"Q. In the past have you received inquiries from these newspaper stockholders as to the activities of Atlantic Features?

"A. Of course, yes.

"Q. Since April 1962, have you reported to your stockholders about this litigation?

"A. I have talked to most of them. One of them wrote me a letter asking me and I wrote him a letter telling him what I thought was the situation at the time.

"Q. Since April 1962, have you received any specific—

"A. 1962?

"Q. 1961—excuse me. Have you received any specific inquiries from such stockholders in regard to this litigation?

"A. As I say, I got a letter from one of the stockholders asking me what the situation was, what it meant to Atlantic, and then the others have doubtless asked me specific questions about it.

"Q. I believe you testified yesterday that you are selling close to forty years in the Southeast; is that correct, sir?

"A. I started as a salesman back in 1923. I was transferred to the Southeast, to the best of my recollection about 1925, and that would be about thirty-seven or thirty-eight years, 840 something like that.

"Q. During that course of time, have you developed any personal relationships with any of the publishers in the Southeast?

"A. Very great many of them.

"Q. Has this come about through your soliciting and bidding for color comic supplements and features in the area?

"A. It has come about through my seeing these people from time to time and for many reasons: business, selling, selling features, selling comic supplements, social, conventions, all that sort of thing.

"Q. Mr. Hornady, how much time do you spend away from your home in New York, as far as your business; is concerned?

"A. Usually it is about half of a year. This year it was really less than half.

"As I explained yesterday, I was away from it during a good time because of the gastrectomy I had this fall.

"Q. In the past, each time that you have called upon newspaper publishers in the Southeast, have you always either solicited or bid for supplements or feature business?

"A. No. Sometimes I'd just be going through town,
841 go by and say hello to them and ask them how they like my printing, if they were printing clients—if everything was all right or how they liked a feature I had sold them. Just to visit them.

"Q. Did you have conversations with them as to matters other than the supplement and feature business?

"A. Sure. You mean did I talk to them about things other than business?

"Q. That's right, sir.

"A. Of course I did. I talked to them about their grandchildren and my grandchildren and their families and their hobbies, hunting—what about so and so, a mutual friend—a lot of conversation.

As a matter of fact, I guess any salesman of any kind talks like that, has a lot of conversation irrelevant to business with his customers he calls on.

"Q. Mr. Hornady, do you know whether the bringing of this lawsuit is common knowledge in the newspaper publishing field in the Southeast?

"A. Yes, sir, it was in some of the newspapers, in trade papers and that sort of thing. I think it was the last order issued by the

Court—

842 "Q. Is that the June 22nd order you are referring to?

"A. I think it was that order, of the Editor & Publisher which is a major tradepaper in the newspaper business.

"Q. Since April 1961, have you ever been asked questions by newspaper publishers as to this present litigation?

"A. Yes, sir.

"Q. Have you volunteered answers, to the best of your ability?

"A. It doesn't follow if I was asked a question did I volunteer answers. I have given answers, to the best of my ability. They say, 'What about this case?'

"I say, 'Well, the present situation is so and so and so and so.'

"Q. Mr. Hornady, I believe you testified yesterday that when you first joined Atlantic Features, Southern was printing something like 700,000 fours; that correct, sir?

"A. Something over 700,000 fours, yes, sir.

"Q. In other words, seven and a half—

"A. 746,000.

"Q. At that time do you know whether Southern was making a profit?

"A. Mr. Smith has told me that they were making a
843 small profit.

"Q. To your knowledge, at that time was Southern or Atlantic actively and aggressively soliciting business throughout the Southeast?

"A. They didn't have any salesmen. Mr. Smith, who was the general manager of a newspaper at that time—I think was mayor or about to become mayor, or something—a very busy man. I think he probably was soliciting business from time to time by sending out form sales letters.

"I do know at one time when I was with King Features Syndicate and there was a meeting of this Southeastern group having to do with awarding that printing contract and I went there to represent King Features Syndicate and Mr. Smith was there representing Southern Colorprint—I am sure he made occasional trips, but he couldn't be a salesman in the sense of a salesman going around calling on papers all the time because he had such other demanding duties.

844 "Q. Is it fair to say that Atlantic Features on Southern's behalf was not aggressively and actively soliciting business?

"A. At what time?

"Q. At the time when you first joined or at the time prior to the time you joined Atlantic Features.

"A. Atlantic, of course, was not doing anything at all because Atlantic was just organized at that time.

"Q. Just directing your attention to Southern—

"A. They were not doing much of a sales job. That is why they arranged this sales representation with Atlantic.

"Q. As to the accounts which you subsequently acquired from the time you joined Atlantic Features to April 1961, as to those accounts, did Southern enjoy a geographic competitive advantage?

"A. In the main I would say they did, yes.

"Q. What was the story in regard to the accounts which you acquired from King or from International for Southern?

"A. What was the story, Mr. Feldman?

"Q. I am talking about the geographic location of the accounts involved.

"A. I think, as I said, most of them were closer to Newport News than they were to Wilkes Barre where they were being printed.

845 "Also, I suspect that my price was under the price King Features was charging them.

"Q. Were there ever cases where you had this competitive geographic advantage where you were not able to get or acquire accounts?

"A. Many such cases.

"Q. Was this due in any way to the predatory practices you testified about yesterday, or referred to?

"A. Yes, sir. I didn't get some of them because King Features tied in the rights to that subject matter and quoted high rates for that subject matter in case they lost the printing; and other cases they made arrangements with the newspaper to put the business on a delivered basis which was the equivalent of giving them—let me put that differently.

"The delivered basis idea was the equivalent to the publisher of having his supplement already printed at Sylacauga.

"In other words, King Features Syndicate would say, 'You are paying \$1.50 per hundred weight for transportation from Wilkes-Barre; the transportation from Sylacauga would be 75 cents a hundred weight. You know we have been talking 846 to you a long time about starting a plant in Sylacauga and we don't like for you to wait any longer for that savings, so we are going to make a new contract with you, laying the thing down then in your own town, and we will absorb

the difference in the cost of the actual transportation cost from Wilkes-Barre and what it would be if we had our plant at Sylacauga.'

"Mr. RAICHLE: I think I should note this, that you and I can concede that we are taking this deposition under the conventional rule that objections except as to the form of the question and the form of the answer are reserved until it is offered, and much of this is hearsay.

"I did not want to interrupt the gentleman or you.

"My understanding is that objections on the basis of hearsay are properly advanced at the time of the trial or at the time of the hearing.

"Mr. FELDMAN: That is right, sir.

"By Mr. FELDMAN:

"Q. I will ask you, Mr. Hornady, just to facilitate this, to attempt to be more responsive to my questions as we go along.

847 "By April 1961 how many newspapers were you serving on behalf of Atlantic Features?

"A. I have forgotten the exact number, Mr. Feldman, but I think it was something around 20 or 22 or something like that.

"I just can't recall those figures.

"Q. How many did you say?

"A. 20 to 22. I just can't recall the exact number.

"Q. Before we go into the subject, Mr. Hornady, going back to the previous question in which you spoke about transportation rates, that situation you then described in regard to King, has that course of conduct been termed in the trade "hypothetical rates"?

"A. I have heard of it spoken of that way.

"Q. Once again asking you, how many newspapers did you have on behalf of Atlantic on or about April 1961?

"A. As I said, I can't recall the exact number, but I think it was 20, 21, 22, 23, 24—something like that. Probably closer to 20.

848 "Q. With the newspapers which you acquired, namely, the six accounts you spoke about yesterday, that would bring the total number of newspapers up to what?

"A. 28 or 29.

"Q. The press which you testified about yesterday, that Southern purchased, do you know whether that press was purchased before or after April 1961?

"A. I think it was, sir, but I don't remember exactly what date it was.

"Q. You think it was what—before or after?

"A. Yes, before.

"Q. Before April 1961?

"A. Yes, sir.

"Q. Do you know whether that press was installed before or after June 22, 1962?

"A. It was installed before.

"Q. Before June 22, sir?

"A. That is right.

"Q. I believe you gave some figure yesterday as to the total capacity of Southern. Are you qualified to give an opinion as to what the actual total capacity would be of that press, sir?

"A. No, not actually so, sir. That varies. You can say regarding capacity, if a press or several presses run all the time, it can turn out so many four-page units a week or so many 89 supplements a week, but also you have got to figure in that time to repair anything that goes wrong with the press; cleaning the press and that sort of thing. So it varies what the capacity is.

"Q. Is there anyone at Southern who is in a better position to give an opinion as to the total capacity of Southern?

"A. Of course, Mr. Smith who is very close to the situation, is the general manager, and Mr. D. H. Lawson, the superintendent of the plant.

"Q. As to the six new accounts which you acquired since April 1961, how would you describe those accounts—as large, small, medium?

"A. I would describe Charleston, West Virginia and the Greensboro News and Norfolk as fairly large. I describe Macon as about medium, and I describe Greensboro Record and Beckley as small.

"Q. Was your ability to get these accounts in any way due to the installation of this new press which you previously testified about at Southern?

150 "A. Oh, yes. Our expansion had a great deal to do with not only our ability to take care of this business, but also the confidence that the newspapers would have in our ability to take care of their business.

"There were several instances—am I going on? You said something about responding.

"Q. Yes. In other words, your answer is yes?

"A. Yes.

"Q. Mr. Hornady, during the course of your negotiations to acquire; these six new accounts, did there ever come a time when executives or employees of the publishing accounts came and called upon the premises or plant at Southern?

"A. Yes, sir, I remember that executives from Winston-Salem, North Carolina and Charleston, West Virginia and Norfolk, Virginia, made visits to the plant.

"Q. Mr. Hornady, as far as you know, was the purchase and the installation of this new press or press purchased by Southern related in any way to the order of June 22nd of this court?

"A. No, it didn't have anything to do with any orders.
851 "Q. Mr. Hornady, I believe you previously testified in your previous deposition, and I will read you the particular questions and answers to refresh your recollection—

"On Page 135, 'Question: As a matter of fact, Greater Buffalo never solicited any of your clients, did it?'

"'Answer: I can't recall but one case, sir.'

"Is that your present recollection as to what took place in the past, sir?

"A. Yes, sir.

"Q. Now, this one case was what, sir?

"A. Greenville, South Carolina News.

"Q. Mr. Hornady, the practice you testified to in regard to Greater Buffalo not soliciting any of your accounts, to your knowledge, has that continued to the present time?

"A. I haven't run into a situation where Greater Buffalo is so soliciting my clients.

"Q. Mr. Hornady, since April 1, 1961 do you know of any case where printing was done at International and has continued to be printed at International, but where the contract holder has changed?

"A. Yes, sir. I remember I bid on Columbia, South 852 Carolina State which was then printed under King Features' contract at Wilkes-Barre and NEA also bid upon that printing, and NEA got the business; and executives on the paper told me—

"Q. Without going into that, where was it printed before?

"A. At Wilkes-Barre.

"Q. Do you know where it is printed now?

"A. I have been told by executives on the paper that it is still printed at Wilkes-Barre.

"Q. You have knowledge that it is presently being printed at Wilkes-Barre?

"Mr. RAICHLE: He has information.

"Q. Knowledge or information?

"A. That is right, sir.

"Q. Is there any other paper that you know about?

"A. Danville, Virginia Register was printed at Wilkes-Barre under King Features' contract and the general manager of that paper told me—

"Q. Without going into conversations, do you have any information as to where it is presently being printed?

"A. No. All I know about that is that NEA got the business away from King. I assume it is still printed at Wilkes-Barre, if that is possible, because Wilkes-Barre is closer to Danbury than Buffalo.

853 "Q. Mr. Hornady, I read you part of the affidavit which has been submitted by Mr. William J. Hammond in connection with the pending motion and it reads as follows:

"I am quoting from Page 2, now—

"I am further informed that Southern Colorprinting corporation has been and is now actively soliciting business, and moreover, obtaining business which Greater Buffalo Press and Dixie Colorprinting Corporation are restrained from soliciting."

"Mr. Hornady, do you know of anything in the June 22nd order which restrained or presently restrains Greater Buffalo from soliciting or bidding for the newspaper contract accounts?

"I am talking now only about the contracts, of the six accounts which you acquired since April 1961.

"A. I know they were restrained from printing them at Sylacauga, but they would not be restrained from printing them at International Color.

854 "Q. I am talking now about the contract, regardless of where it is printed. Is there anything which restrains Greater Buffalo, as far as you know, under the June 22nd order, from bidding for the contracts?

"A. If they have a place to print them, they can bid for the contracts. It is my understanding that they can print them at Wilkes-Barre. That is all I know on that.

"Mr. RAICHLE: I do not mind you making him an expert, if you want to.

"Mr. FELDMAN: Mr. Raichle, there has been an affidavit submitted here.

"Mr. RAICHLE: It is all right; go ahead.

"By Mr. FELDMAN:

"Q. Assuming that the printing is presently being done at Wilkes-Barre and that the printing will continue to be done there, is there anything under the present order which prevents Greater Buffalo Press from bidding for the contract involved in that particular printing?

"A. Not that I know of, sir.

"Q. Since April 1961, have you bid on more accounts than the six which you acquired?

"A. Oh, yes, I bid on quote [sic] a lot.

"Q. Do you know the exact number?

"A. No. I don't know the exact number.

855 "Q. Can you give me an approximate number?

"A. I think I bid on about 20 papers altogether.

"Q. And the majority of them you did not get; is that correct, sir?

"A. Of course, yes.

"Q. Do you know of anything in the order which prevented or restrained Greater Buffalo from bidding for the newspaper supplement printing contracts for those accounts which you bid on and lost, or did not acquire?

"A. No, sir.

"Q. Mr. Hornady, referring now to the particular six accounts which you acquired since April 1961, referring now to Greensboro, North Carolina, I believe you testified, am I correct, that there were two newspapers involved there?

"A. Yes, sir.

"Q. Is it one publisher you dealt with there or two?

"A. One.

"Q. How did that come about, sir?

"A. You mean how did I get the business?

"Q. No; how did it come about that you only dealt with one publisher, there being two newspapers?

856 "A. The two newspapers are under the same ownership. This man is publisher of both newspapers or general manager. He has all the authority in connection with those two newspapers.

"Q. Mr. Hornady, do you know who was printing for those two newspapers—that is the color comic supplements—immediately prior to the time you acquired the account?

"A. Eastern Color, Waterbury, Connecticut.

"Q. Do you know who was printing these two newspapers since June 1, 1955?

"A. Read that back, please."

"(The pending question was read back by the reporter.)

"A. Eastern has been printing them a long time.

"Q. As far as you know, Mr. Hornady, is there anything in the June 22nd order which restrained or prohibited any of the defendants in this litigation from bidding on either the contract or the printing for those two newspapers?

"A. No, sir.

"Q. In other words, that was open territory for everyone; is that correct, sir?

"A. I assume so, sir.

"Q. In regard to the geographic location—

857 "Mr. RAICHLE: Excuse me, Mr. Feldman. 'Open territory for everybody' you mean as distinguished from a closed territory?

"Mr. FELDMAN: Open in the sense of bidding; anyone could bid on it."

"By Mr. FELDMAN:

"Q. Mr. Hornady, in regard to the geographic location of Newport News to Greensboro, North Carolina, how does that compare with either Waterbury, Wilkes Barre and Dunkirk?

"A. Newport News is closer.

"Q. How does the geographic location compare with Sylacauga, Alabama?

"A. Newport News is closer.

"Q. In regard to the accounts at Charleston, West Virginia, Beckley, West Virginia and Norfolk, Virginia, do you know who did bid for those accounts outside of Atlantic Features?

"A. Better take them one at a time, Mr. Feldman.

"Q. Let us start with Charleston, West Virginia.

"A. I know of no one that bid on that job besides myself, other than the supplier at that time which was King Features.

"Q. Do you know whether Greater Buffalo bid for that job?

858 "A. As far as I know, they did not.

"Q. Going to Beckley, West Virginia, who bid for that account, outside of Atlantic Features?

"A. King Features Syndicate was printing it at that time. I assume they probably made a quotation and I understand NEA also bid on that printing.

"Q. Do you know whether or not Greater Buffalo bid for that account?

"A. Not as far as I know, sir.

"Q. Going to Norfolk, Virginia, do you know who bid for that account outside of Atlantic Features?

"A. No, sir, except in the sense that King Features was already printing it, and the King Feature price was established.

"Q. Do you know whether Greater Buffalo bid for that newspaper?

"A. Not to my knowledge.

"Q. Taking those three newspapers, or considering the three newspapers, how does the geographic distance from Newport News compare to those newspapers in comparison with Wilkes Barre and Dunkirk?

"A. I think that Newport News is a little closer—I don't know how much closer, but it is closer to Newport News than it is to Wilkes Barre and Dunkirk.

859 "The same is true of Beckley and of course Norfolk is a great deal closer.

"As Mr. Moore said, Norfolk is in Newport News' backyard.

"Q. As to those three accounts, does the June 22nd order of this Court give you, as far as you know, any competitive advantage of obtaining those accounts?

"A. Oh, no.

"Q. There is one other newspaper left and that is Macon, Georgia; is that correct?

"A. Yes, sir, I got Macon.

"Q. Where was that newspaper printed again?

"A. At Wilkes Barre, Pennsylvania.

"Q. Geographically, how does that newspaper compare with Newport News and Wilkes Barre?

"A. You mean the distance?

"Q. The distance, sir.

"A. Newport News is closer than Wilkes-Barre.

"Q. In obtaining this account, were you able to utilize this competitive geographic advantage?

"A. Bert Struble, the general manager of the Macon paper—

860 "Q. I wish you wouldn't go into conversations.

"Mr. FELDMAN: Repeat the question, please."

(Question was read back by the reporter.)

"A. Not in the sense of transportation because the price on transportation from Newport News to Macon was \$1.38 per

hundred weight, as I recall it, and that was the same price that the same trucker was charging from Wilkes-Barre to Macon to haul the supplements when they were printed at Wilkes-Barre?

"Q. In other words, then you were able to offer the same transportation rate as Wilkes-Barre; is that correct?

"A. Yes, sir.

"Q. You mentioned Herndon. Is that the trucker you presently use to service that account?

"A. Yes, sir.

"Q. Herndon Trucking Company, as far as you know, is that a common carrier or what is it?

"A. I don't know whether it is a common carrier in other products or not, but my understanding is that it is a private carrier when it comes to hauling newspaper supplements.

"Q. Does Herndon, to your knowledge, publicize or
861 publish rates that it is going to charge in advance, for any length of time in advance?

"A. Not to my knowledge.

"Q. How do you determine what rate this particular trucker is going to charge?

"A. Asking.

"Q. Do you recall testifying at the time of your previous deposition in regard to Defendants' Exhibit P that you or Southern were not able to utilize the services of Herndon?

"Mr. LAYTON: Could you tell us what Defendants' Exhibit P is?

"Mr. FELDMAN: Yes. It is a letter addressed to Southern Colorprint from Herndon.

"Please read back the last question.

"(Whereupon, the reporter read back the pending question.)

"Q. Do you recall that?

"A. I don't know what Exhibit P was, but I do recall that I have said that the Herndon Trucking Company declined to quote us on some of our hauling when we asked him to.

"Q. Since the time of your deposition, has the situation changed in any respect?

862 "A. Yes, sir. Now Mr. Herndon will quote us rates and apparently wants to haul for us.

"Q. Is this the only account, namely the Macon, Georgia, which you utilize Herndon for at the present time?

"A. Yes, sir.

"Q. Yesterday, Mr. Hornady, I believe you were asked whether you have a competitive complaint or complaints against International.

"Do you remember so testifying yesterday?

"A. Yes, sir, I remember that came up.

"Q. Mr. Hornady, I show you Plaintiff's Exhibit 25 attached to the affidavit of Mr. Raymond M. Carlson, and ask you to examine the document.

"A. What was the question?

"Q. I asked you to examine it, sir.

"A. Yes, sir, I have examined it.

"Mr. FELDMAN: Exhibit 25, for the record, is a letter from Cranel B. Herndon to International Color Printing Company, dated December 22, 1959.

"Q. Mr. Hornady, assuming the matters and contents of that letter to be correct, I ask you now, do you still say that you have no economic complaint against International?

863 "A. That was certainly hurtful to us, that the main comic supplement that we carry in the south had made some sort of agreement or something with International Color not to carry our supplements, but since this thing started, apparently he has changed his tune because he has been around offering to haul our supplements, although the price he gave us on hauling Macon was, I think, a little unfair since Newport News was a good deal closer to Macon than Wilkes Barre and we ought to have a lower rate.

"Q. In answer to my specific question, assuming the contents of that Exhibit 25 to be correct, would you say now that you have never or would never have or do not have an economic complaint against International?

"A. I had an economic complaint—I mean I have got an economic complaint on the basis of this thing, yes.

"Mr. RAICHLE: On the basis of the assumption?

"Mr. FELDMAN: That's right. The question is predicated on that, sir.

864 "Q. Mr. Hornady, without Herndon having been made available to you, or at least the services of Herndon, would you have been able to obtain or at least acquire this Macon, Georgia account?

"A. I don't think I would have, sir, because several years previous to that I tried to get Macon and the only rate I could get that was at all comparative to the rate they were paying

from Wilkes Barre was a rate by baggage express on the railroad, which means the newspaper would have to haul the supplement up from the railroad station and as I recall it, they specifically told me they did not want to do this, and that was the reason I did not get the business.

"Q. At the present time, do you know or have any information as to whether Herndon offers rates, transportation rates to International which are advantageous to International as opposed to Southern Colorprint?

"Mr. RAICHLE: The question is 'Do you know?'

"A. The only one that I have definite knowledge of is Macon which does not give Southern Colorprint an advantage, although it is closer to Macon.

"Q. I am talking about other accounts. Do you know of any other instances where this rate advantage exists, al-
865 though there may not be a geographical advantage?

"A. I don't recall any specific instances. I know they have pretty low rates from Herndon all over the southeast.

"Mr. RAICHLE: 'They' being whom?

"The WITNESS: International Color.

"Mr. RAICHLE: I move to strike that out.

"Q. In other words, then, it is your testimony you don't know of any specific instances; is that correct, sir?

"A. I don't recall any.

"Q. Mr. Hornady, in the event the order of June 22nd was not in existence and imposed no restraints in regard to the operation of the Sylacauga plant, would you have obtained the five accounts, not referring now to Macon, Georgia, if the Sylacauga plant was in operation since April 1961?

"A. I don't think Sylacauga had anything to do with Charleston and Beckley and the two Greensboro accounts and the Norfolk account.

"Q. Is it your testimony, then, that your acquiring or obtaining these five accounts were in no way related to the
866 June 22nd order of this Court?

"A. In no way related to Sylacauga, and Sylacauga is affected by the June 22nd order so they are in no way related.

"Q. In other words, under the June 22nd order did you receive any competitive advantage as far as you know?

"Mr. RAICHLE: Just let me note that no basis has been laid for this. You can go ahead with his answer.

"Mr. FELDMAN: Repeat the question."

(Whereupon, the pending question was read by the reporter.)

"Mr. FELDMAN: I will withdraw the question.

"Q. As far as you know, Mr. Hornady, did the terms of the June 22nd order of this Court offer you any competitive advantage in bidding and obtaining those five accounts you just testified about?

"A. No, sir.

"Mr. LAYTON: I believe there were six.

"Mr. FELDMAN: No, I am not talking about six.

"The WITNESS: No, sir.

867 "Mr. RAICHLE: You say 'offer you.' You don't mean that. Provide for him."

(Previous question was read back by the reporter.)

"Q. Directing your attention to the Macon, Georgia account, assuming that the Sylacauga plant was in full operation since April 1961, and no restraints were imposed upon the operation there, would you have obtained the Macon, Georgia account?

"A. I think it would have been unlikely because they would have enjoyed a much lower transportation cost from Sylacauga to Macon than we could enjoy from Wilkes-Barre to Macon, which is the same as the one I have to live with, so I would say I had no advantage in getting Macon under present conditions, and there would have been a transportation disadvantage if Macon could have been printed at Sylacauga.

"Q. Is it fair to say then—

"Mr. RAICHLE: When you say 'they would have enjoyed', you mean the newspaper would?

"Q. Aren't you referring to International?

868 "Mr. RAICHLE: Wait a minute. You are telling him who he is referring to.

"The WITNESS: Macon happens to be one of those papers that have been on a delivered basis for some time with King Features for International Color Printing and if they had been able to reduce that delivered cost—

"Q. When you refer to 'they', whom are you referring to?

"A. If King Features had been able to reduce that delivered cost because of an ability to print Macon at Sylacauga, then they would have had an advantage because the delivered cost from Sylacauga would doubtless have been less—

"Mr. RAICHLE: The newspaper would have had the advantage?

"Mr. FELDMAN: Wait a minute. He's talking about his competitors; he's not talking about newspapers.

"Mr. RAICHLE: He has testified repeatedly that when the transportation charge is passed down to the newspaper, the customer gets the benefit.

"Do you dispute that?

"Mr. FELDMAN: He is talking about his competition and what took place on a competitive basis. We are not
869 talking about newspapers.

"Mr. LAYTON: Why don't you let the witness explain what he means?

"Mr. FELDMAN: Read the last question back, please."

"(The pending question was read by the reporter.)

"A. I think it is unlikely that I would have obtained the Macon, Georgia account, because King Features Syndicate, if they could have had this supplement printed at Sylacauga, would have had their transportation cost lowered. This is a cost figure that they consider in their pricing to Macon because Macon is on a delivered basis.

"Q. Referring to this Macon, Georgia account, do you know whether the newspaper involved when it was printed at Wilkes Barre was charged the actual transportation costs, less or more?

"A. I am not positive of this recollection, but my understanding is—

"Mr. RAICHLE: The question is do you know. It is either yes or no, you either do or you don't.

870 "A. I am addressing this to you, sir. You as an educated man know that there are varying degrees in the meaning of words. If someone asked you, 'Were you completely educated', you would be inclined to say 'Yes. I am an educated man.' But there are doubtless things you don't know, so there are degrees of knowing, and that is what I mean by this.

"What was the last question?

"(The pending question was read by the reporter.)

"A. It is my understanding that—

"Mr. RAICHLE: I object to his understanding. That savors of information, not knowledge.

"A. It is my understanding that—

"Q. Do you have any knowledge at all, regardless of the source?

"A. Well, I think I do.

"Q. Then the answer is yes.

"Will you tell us what knowledge you have?

"Mr. RAICHLE: And in which degree?

"Mr. FELDMAN: No, I am asking him now what knowledge he has.

871 "The WITNESS: With all these interruptions, Mr. Feldman, I have forgotten what the last question is.

"Mr. FELDMAN: Repeat the question again.

"(The pending question was read by the reporter.)

"A. I believe the general manager of that paper—

"Q. Don't tell me the source, just tell me what the knowledge is.

"A. That King Features Syndicate gave Macon a reduction based on the imminent or future printing of that supplement at Sylacauga, and absorbed out of their own profit, I assume, the difference in the transportation from Wilkes Barre to Macon, which was the larger, and between Sylacauga and Macon, which is the lesser.

"Q. As to the business, Mr. Hornady, you had in April 1961, would you have lost any of that business if the Sylacauga plant had commenced operations without any restraints imposed upon that plant?

"Mr. RAICHLE: I want to note the same objection on the same ground.

"Q. Would you answer the question, Mr. Hornady?

"A. Will you read it again.

872 "(The pending question was read by the reporter.)

"A. I think it is likely that I would have, sir.

"Q. What are the reasons for that, sir?

"Mr. RAICHLE: I move to strike that out on all the grounds I have urged.

"Q. What are the reasons for that, sir?

"A. If there had been no restraint then King Features, let us say, as the agent, could have continued their predatory practices such as including rights to that subject matter, such as making delivered basis deals, such as cutting prices, and in addition to that, they would have had the advantage that the cost to King Features was less on transportation than without Sylacauga being opened.

"Mr. RAICHLE: I move to strike that out, too.

"Q. In the event the Sylacauga plant would commence operations tomorrow, without any restraints at all, would you be in danger of losing any business?

"Mr. RAICHLE: I object to that. There isn't the slightest basis for a question like that. It is improper both as to
873 form and substance.

"Q. Will you answer that question, Mr. Hornady?

"A. I think it is quite likely that I would lose some business.

"Q. Would this loss of business concern accounts other than the six contracts you acquired since 1961 and testified to previously?

"A. Yes, sir.

"Q. Would this also be because of the predatory practices you referred to previously?

"Mr. RAICHLE: I object to that.

"Q. Would it?

"A. If those predatory practices were continued, it would.

"Q. Since April 1961, do you know of any instances where the predatory practices have continued? I am talking about since April 1961.

"Mr. RAICHLE: I object to this continuing use of the term 'predatory practices'—assuming it as a fact. It is undefined by him, unidentified in the question.

"The question is bad as to form as well as substance. No basis has been laid for it.

"Mr. FELDMAN: I will withdraw that question.

874 "Q. Mr. Hornady, what do you mean by 'predatory practices'?

"A. It was a word used yesterday by counsel for the defense, Mr. Raichle.

"Q. What did you mean by it when you testified?

"A. I take it to mean practices that are not engaged in in ethical business solicitation.

"Q. Would that include your testimony in regard to hypothetical or absorbing transportation rates?

"A. Yes, I think that is part of it.

"Q. What you testified to in regard to the offering of feature rights and supplement printing, would that be included in your definition?

"A. Very definitely.

"Q. What you testified to is to the non-availability of trucker Herndon. Would that be included in your definition of predatory practices?

"A. Yes, sir.

"Mr. RAICHLE: The non-availability, however occasioned?

If Herndon didn't want to do business with him?
 875 "Mr. FELDMAN: Repeat the question.

"(The pending question was read by the reporter.)
 "A. My answer was yes, as I recall.

"Q. When you refer to Herndon, do you include in your definition of predatory practices at International's insistence, if you assume the facts as reported in Exhibit 25—

"Mr. RAICHLE: I object to this whole line—this one particularly on the basis of form and substance.

"Q. If you assume the facts, as reported in Exhibit 25, which I just showed you a little while back—

"A. Was that the Herndon letter?

"Q. That's right.

"Do you include in your definition of predatory practices the unavailability of Herndon to Southern at International's request?

"Mr. RAICHLE: That isn't what the letter says.

"Mr. FELDMAN: It reports facts in there to that effect.

"Mr. RAICHLE: It does not.

"Mr. FELDMAN: The letter speaks for itself.

876 "Q. Do you include that in your definition or what you mean by predatory practices?

"A. Yes, sir.

"Mr. LAYTON: At this juncture, can I interrupt to ask Mr. Hornady about how he feels about continuing on at this point?

"The WITNESS: I am very tired because yesterday was a very stressful day for me.

"Mr. LAYTON: Would you like to take a short break?

"The WITNESS: I'd like to ask Mr. Feldman how much longer he has.

"Mr. FELDMAN: I don't know yet.

"The WITNESS: If it is not disagreeable to you gentlemen, I think five or ten minutes might be a good idea now.

"Mr. FELDMAN: All right.

"(Whereupon, a recess was taken.)

"By Mr. FELDMAN:

"Q. Mr. Hornady, I believe you previously testified in your former deposition that based upon your experience, King has acted as the agent for International and that NEA has 877 acted as the agent for Greater Buffalo?

"A. Yes, sir.

"Mr. RAICHLE: Wait a minute. I want to record an objection before the answer, but Mr. Feldman hasn't completed his question.

"Q. I am referring to Page 100 and Page 104 of the previous deposition.

"Mr. RAICHLE: The question of agency and the relationship which he has heretofore under oath characterized that of contractor and sub-contractor is to be determined by the Court, not by this witness, whatever degree of expertise translated into alleged knowledge that he is going to speak from.

"Mr. FELDMAN: I am asking the witness whether he recalls previously testifying—

"Mr. RAICHLE: That doesn't make it better simply because he said it once before.

"Mr. FELDMAN: You have noted your objection.

"Mr. LAYTON: Gentlemen, can we agree that objections, except as to form, are reserved?

878 "Mr. RAICHLE: This one is bad as to form and to substance.

"By Mr. FELDMAN:

"Q. Mr. Hornady, is that still your testimony today in regard to the past practices of King, International, NEA and Greater Buffalo?

"Mr. RAICHLE: That didn't relate to practices. It related to—

"Q. Course of conduct or practices?

"Mr. RAICHLE: I object to that on all the grounds I have been urging. It is bad as to form, substance—no basis has been laid for it. It assumes things outside of the evidence.

"Mr. FELDMAN: I will withdraw the question.

"Q. Mr. Hornady, as far as you know today of the industry, would you characterize the relationship of King and International as that of agent and printer, and the relationship of NEA as agent and that of Greater Buffalo as printer?

"Mr. RAICHLE: I object to that. There is no basis laid for that. It involves a conclusion. It is bad as to form and substance.

"Mr. FELDMAN: I will ask the witness.

879 "A. Yes, in my understanding of the word 'agent', I would say that that is correct.

"Q. Based on your experience, you look upon or find the selling and the printing of color comic supplements to be one industry or different industries?

"Mr. RAICHLE: I make the same objection as to that, that it is even worse.

"Q. Would you answer that question?

"A. Of course it is the same industry. The manufacture of the product and the sale of the product is in the same industry.

"Q. Mr. Hornady, yesterday, I believe you were asked questions about the substantial transportation savings which newspapers would get in the event the Sylacauga plant would commence printing operations; is that correct, sir?

"A. I was questioned about that, as I recall.

"Q. In the event the Sylacauga plant would commence operations, as far as you know, is there any guarantee that any savings which would be effected in transportation would be passed on to the newspapers?

"A. No, sir.

"Mr. RAICHLE: Any guarantee from whom?

880 "Q. What is the basis for that opinion, Mr. Hornady?

"A. I don't know whether Mr. Koessler and King Features Syndicate—whoever holds these contracts—would give the newspapers the full benefit of any transportation savings that might develop. They can raise the prices; they can insist on part of the savings themselves. I just don't know but I don't think that there is any certainty that the newspapers would get all of the savings.

"Q. Since you joined Atlantic Features and Southern has expanded its operations, have any of the newspapers in the Southeast effected any savings because of this expansion?

"A. Yes, sir, I am sure that a number of them have effected savings.

"Q. Did this savings apply to newspaper accounts which you had or did it also apply to other newspaper accounts?

"A. It applied to other newspapers.

"Q. How did that come about, sir?

"A. I would go out for the business and King Features would reduce their rate, or NEA would reduce its rate.

"Mr. FELDMAN: I have no further questions.

881 "Mr. RAICHLE: I have a few.

REDIRECT EXAMINATION

By Mr. RAICHLE:

"Q. Yesterday, when you were asked about this relationship of agent, subcontractor, and so forth, as between King Fe-

tures and International Color, didn't you say in these words,
 'It is a matter of semantics'?

"A. I think I did, yes, sir.

"Q. Is that your opinion today?

"A. Yes.

"Q. Do you have the same opinion you had yesterday?

"A. Amplify that question, please.

"Q. You haven't changed your opinion overnight, have you?

"A. As to whether they are subcontractors or agents?

"Q. Yes.

"A. My opinion has been changed to this effect, that I realize that I don't know the technical meaning of subcontractor as opposed to the technical meaning of agent.

"Q. Mr. Hornady, you speak of no guarantee, or counsel speaks of no guarantee—no assurance that the freight savings which we have been talking about, the transportation savings in the Southeastern area would be affected if Sylacauga opened. Your competition would require them to be passed on to the newspaper. You are doing it, aren't you?

"A. In all cases, yes.

"Q. Whoever the operator of Sylacauga was, couldn't compete with you unless he did the same thing effectively?

"A. As long as I am in business, I would be to some extent and in some cases a deterrent to any higher rates that Sylacauga plant might charge.

"Q. Who gave you this information about Macon that you were giving here?

"A. You mean about the transportation?

"Q. Yes. Who, by name?

"A. Mr. Bert Strubel, the general manager.

"Q. When?

"A. About the time I obtained this contract.

"Q. When was that, if you will refresh my recollection?

"A. The contract is dated the 11th of June, so it must have been —

"Q. Of what year?

"A. 1962. So it must have been early June or the latter part of May.

"Q. What you know about that is hearsay, something he told you and you heard?

"A. That is correct, sir.

"Q. I will try to adopt your words so we don't get into any unnecessary argument about phrasing these things.

"You said that the tie-ins and the reduction of prices under certain circumstances, and these other matters and things which you characterized as predatory practices, were not engaged in in the course of ethical solicitation of business.

"Do you remember so stating?

"A. Yea.

"Q. Those are the things which you have done all your life, isn't that so?

"A. It is not, sir. I have always conducted myself on an ethical basis.

"Q. You conducted tie-in sales, so you claimed, didn't you when you were with Hearst?

"A. I did on instructions.

"Q. But you did it, didn't you?

884 "A. Yes, I did it.

"Please don't try to intimidate me by your tone of voice, counsel.

"Q. I am sure you can't be intimidated.

"A. You are quite right.

"Q. Have I offended you?

"A. Anyone who shouts at you will find that offensive.

"Mr. RAICHLE: Let the record show that I am not shouting.

"Mr. LAYTON: Now.

"Q. After you went with Southern Colorprinting, you continued this business of selling comic features and printing, didn't you?

"A. Yes, I was selling features for the Hall syndicate.

"Q. You testified in your previous deposition that what you were doing individually was exactly what Hearst had been doing, isn't that true?

"A. In the sense that that was the sort of business I was engaged in.

"Q. You have reduced prices to meet competition, haven't you?

"A. Yes, sir.

885 "Q. You have reduced prices to eliminate competition, haven't you?

"Mr. LAYTON: During what period of time?

"Q. Since you have been with Southern Colorprinting.

"A. You mean eliminate competition in the sense of getting

rid of the competition altogether, or in meeting the competition with a specific instance?

"Q. Both.

"A. I will never try to put King Feature Syndicate or Greater Buffalo or NEA out of business.

"Q. What about taking all that business in the field that Eastern Color had?

"A. That is not putting Eastern Color out of business. Eastern Color I still think is next—

"Q. Would you have—

"A. I didn't finish my previous answer.

"Q. Please.

"A. I did not. I was not attempting to put Eastern Color out of business and I did not come anywhere near it. I just eliminated their business in Greensboro, North Carolina. They still do a tremendous amount of printing in the eastern states.

"Q. But not in the southeastern states, the area with which we are concerned?

"A. That is correct, sir.

"Q. Let me see if despite our little personal clash here we can get something else.

"You say this Court order of June 22, 1962 was not entered for your benefit; is that right?

"A. No, sir. This whole case.

"Q. Was it entered for your benefit?

"A. Not that I know of. I wouldn't assume so.

"Q. Was it entered for the benefit of the newspaper publishers, the consumers in this industry?

"A. No, sir, I think it was entered for—

"Q. Please let me ask the questions.

"Mr. LAYTON: Have you finished the question?

"Mr. RAICHLE: I am about to ask another one.

"Mr. LAYTON: Let him answer the first one. Read the question back.

"(Question was read back by the reporter.)

"A. I would like to rephrase that. I think it was entered as a part of the adjudication in these cases, whether to benefit the Government or Greater Buffalo or International or the business community or whatever, I don't know.

"Q. Can you give me the name of a single person who has been benefitted by the order?

"That calls for a yes or no, if you will be kind enough.

"Mr. LAYTON. No, it doesn't.

"Mr. RAICHLE: 'Can you give me the name?'

"Mr. YOUNG. Unless he wants the names.

"Mr. LAYTON. He wants to know whether you were able to give him any names. He doesn't want the names now.

"The WITNESS. I could give him probably a thousand names or I could say—

"Mr. LAYTON. Then your answer would be yes?

"The WITNESS. Yes.

"Q. Give them to me.

"Mr. LAYTON. Would you like him to list now all of the names that he could think of?

"Mr. RAICHLE. Those that come to him.

"Mr. LAYTON. I assume he will have adequate time to answer that question.

"Q. Do you want to put your own at the top?

888 "Mr. LAYTON. I prefer you not to suggest the answers to him. He will give you the answers.

"Mr. RAICHLE. I hope.

"A. I think it benefitted every person in the country who is hurt by the operation of a monopoly. I think it specifically benefitted the owners of the newspapers who might suffer because of high prices for comic supplements—could be assumed to follow a monopolistic practice.

"I think it benefitted Greater Buffalo and Mr. Koessler's other companies because it permitted them to operate this plant, which is what they have been wanting to do.

"I think it benefitted the Government because it did not permit this plant to be operated in an unrestrained basis.

"I think it benefitted Atlantic Features and Southern Colorprint because it was not permitted to operate in an unrestrained fashion.

"That is all I can think of now, sir.

"Q. Then the names would fall within those categories?

"A. That's right.

889 "Q. Your name would be one of them?

"A. My name would be one of them although, sir, the record would show that Southern Colorprint and Atlantic have always felt that order, which I believe is number one, that the plant should not be opened at all until the adjudication of the major issue, because in opening the plant the whole pattern of the industry would be changed from the time the Government

entered suit against these defendants charging monopolistic practices.

"Q. Your reference to plan number one or order number one is of interest to me.

"You are familiar with these proposed orders?

"A. I have heard of them. My recollection is that order number one was they wouldn't open the plant at all.

"I may be mistaken, my recollection is that order number one, they would not be permitted to open the plant at all until the over-all situation was clarified by the Court decision.

"Order number two was to permit Sylacauga to open on a limited basis.

"Q. You would prefer, then, and you make the flat statement that Sylacauga not open at all; is that right?

890 "A. Yes, I would prefer that.

"Q. So that you would have a monopoly in the southern territory which Sylacauga would serve; right?

"A. It does not follow. In the case of Macon, I had no monopoly. I had the same transportation cost as King Features did from Wilkes Barre, which is a great deal further from Macon than is Newport News.

"Q. If you did not have the competition of Sylacauga in the areas where you are nearer and in closer proximity than International up in Wilkes Barre, Pennsylvania, you would have the competitive advantage which you swore to yesterday, isn't that so?

"A. It is the same sort of competitive advantage that Wilkes Barre would have and Dunkirk would have in soliciting business in the eastern part of the United States.

"Q. All right, but a competitive advantage, the same one you swore to yesterday; right?

"A. You are referring to it twice. Please elucidate.

891 "Mr. LAYTON: Indicate what part of the record you are referring to.

"Mr. RAICHLE: I could do it very easily, you know that. He testified all day long yesterday about the competitive advantage—you were the first one to use the term, you yourself.

"Q. Do you claim you did not have a competitive advantage; let's take it that way.

"A. I haven't claimed anything.

"Mr. LAYTON: We are simply asking if you would make a specific reference to the testimony that you are referring to.

"Mr. RAICHLE: Take the time of all these gentlemen here to hunt through the record in all the manifold places where they are?

"Mr. LAYTON: Could you phrase the questions in a less unobnoxious manner?

"Mr. FELDMAN: Let's go on.

"Mr. LAYTON: I think the only thing to do under the circumstances is just to let you operate in whatever manner you care to. However, I am going to protect Mr. Hornady, although from what I understand yesterday, you prefer he didn't have any counsel.

892 "That is about as straight as you get things.

"Q. I am going to be a little persistent about this, with no apologies to counsel or to yourself.

What is the last edition, where and when did you see our projections of earnings? Did you see them with Mr. Smith down at Southern Colorprinting as you said yesterday, or did you see them in Washington as you said today?

"A. I think you asked me yesterday when I first saw them. Now you are asking me when I last saw them.

"Q. No, nothing was said about last. What is the last edition of your version of where you saw them?

"Mr. LAYTON: Are you referring to the edition of sheet?

"Mr. FELDMAN: You straighten him out any way you want.

"Mr. LAYTON: Are you referring to that sheet you handed to him yesterday?

"Mr. RAICHLE: I am referring to the time when you saw our projections of earnings contained in our motion
892 papers.

"A. The last time I saw them, sir, is that what you mean?

"Q. Did you see them more than once?

"A. I saw them yesterday and I saw them in Washington and I think I saw them in Newport News.

"Q. Now let's go to the time when you saw them in Newport News, Page 62 for your ready reference, of this deposition, going over to Page 63.

"This is your answer, referring to Mr. Smith:

" . . . had mentioned that he had the figures and he was looking at them.

"Question: Did he show them, that he had them down there in his plant?

"Answer: Yes, and he was looking at them."

"Is that still the truth?"

"A. Yes, I think I saw some figures down there. Whether it was figures previously gotten up by the defendant or some new figures gotten up by the defendant, I don't know.

894 "I saw a sheet and as I said yesterday, I was not particularly interested in it.

"Q. Let's see what you said yesterday.

"Page 62: 'Let's get down to the visit to Mr. Feldman and these projections of ours which you and Mr. Smith were discussing. By the way, did you and Mr. Smith go there together?

"Answer: No, we were in separate planes. I went in the morning and he went later in the day.

"Question: You were discussing the matter with him before you left?"

"And then this part that I just read.

"Is that all true now as it was yesterday, if it was true yesterday?"

"A. Let me get that sequence.

"Yes, as I recollect, he mentioned the figures and was looking at them.

"Q. What was this talk this morning about Mr. Feldman came into the library in the Department of Justice, and as you phrased it, brought them to you, you looked at them and he snatched them in five minutes

"A. I was there reading my deposition, sitting at a table.

He came there and put a piece of paper that looks like
895 that (indicating) on the desk.

"I looked at those papers for a few minutes. There was a lot of them. I couldn't read them all, I certainly couldn't study them all.

"In a few minutes he came back and said, 'I need these' and he took them away.

896 "Q. Did you recognize them as being the same papers you had been talking to Smith about before he went to Washington?"

"Mr. LAYTON: I would like to state at this time that in this reference on Page 72 there is no mention of papers. There is a reference to a discussion between Mr. Hornady and Mr. Smith. If you want the question read back, you can answer it.

"Mr. RAICHLE: Just to see how inaccurate you can be when you try, Page 62; 'Question: Let's get down to the visit to Mr.

Feldman and these projections of ours which you and Mr. Smith were discussing.' Do you see that?

"Mr. LAYTON: That is your question and is directed toward the discussions between Mr. Smith—

"Mr. RAICHLE: The record will speak for itself. You can straighten him out—coach him or whatever you want
897 Let us get along about this.

"Mr. FELDMAN: For the record here, the testimony here does not show that he looked at this particular piece of paper down in Newport News which you refer to as Defendants' Exhibit 1."

By Mr. RAICHLE:

"Q. Did you see our projections before you went to Washington or didn't you? Yes or no?

"A. I saw some figures on a sheet of paper. Whether they were your projections, your first projections or your second projections, whether it was the same sheet I looked at yesterday, I don't know.

"Q. They were operating figures, were they not?

"A. They were purporting to be, sir.

"Q. You looked at them enough to form an opinion as to the sales expense; you are telling us that?

"A. Yes.

"Q. You discussed that with Mr. Smith?

"A. Yes.

"Q. You discussed it down South before you came to Washington, isn't that so?

898 "A. With Mr. Smith.

"Q. You remembered that yesterday and you remember it today; isn't that true?

"A. There was one thing that stood out.

"Q. What was the point about this inquiry in the Department of Justice that the paper was snatched from you in five minutes? What was the point about that? Were you seeking to create the impression that you did not have our figures?

"Mr. LAYTON: I think those questions were asked by Mr. Feldman. I don't think the witness has to comment on the point of the questions asked by government counsel.

"Mr. RAICHLE: I guess you are right about that.

By Mr. RAICHLE:

"Q. Yesterday I asked you more than once, if you will please recall, as to whether you had discussed this order of June 22,

1962 with prospective customers and newspaper publishers. Do you remember my asking you that?

"A. Yes.

899 "A. I also remember telling you that since June 1962 that I have called on only a few publishers and aside from telling one of my stockholders about a letter and a few others of my stockholders who I have seen in New York or at White Sulphur Springs at directors' meetings, I have not discussed this with the few newspapers that I have seen since June 1962.

"Q. This morning you told us that this order which the lead article in the trade paper—

"A. That is right.

"Q. Circulated among all these customers, publishers, if you please?

"A. That is right.

"Q. It was a subject of wide publication and wide discussion; isn't that true?

"A. I think it was widely published. I am sure a lot of people talked about it.

"Q. You told us this morning that when you called on customers, you talked to them about their grandchildren and things like that? Do you remember?

"A. Yes, sir.

"Q. Was it your statement that you would talk to them about their grandchildren, but you would not talk to them 900 about this order?

"A. It was not my statement. It just so happened that in those calls I made since that order, the subject of the order did not come up.

"Q. Did you take the benefit of what advantages the order gave you?

"A. No, sir. I have not been down in the area of Sylacauga since that order. I think my trip to Macon was prior to the order.

"Q. Is there anything you told me yesterday that you would like to correct?

"A. My recollection was very poor yesterday regarding when I saw these papers, but I talked on the telephone to Mr. Smith last night.

"Q. Who called you?

"A. I called Mr. Smith.

"Q. What did you say to him?

"A. We talked about how things were going at the plant. I told him what happened—I mean, a cursory description of what happened at the hearing here yesterday, and asked him how his wife was and how he enjoyed himself at a meeting down in Charlotte—Wednesday, I think it was. I told him this matter of figures had come up and that I thought that I had seen those—that he had shown me those figures. He said those

901 were some earlier figures, some earlier projections. I didn't get those figures until I went to Washington.

"Q. That is what he said to you?

"A. Yes, sir.

"Q. Have you read yesterday's deposition?

"A. Very little of it. I didn't have time this morning to read it all.

"Q. Were you reading it with Mr. Feldman?

"A. I was reading in Mr. Layton's office this morning.

"Q. Do you know of anything in the deposition that is incorrect?

"A. I saw a few things that I think were probably typographical errors or errors in the reporter hearing what you said or what I said that I would want to correct before the deposition went in, but they were not material and important, I don't think—as I recall them. I have forgotten what they were. I did say to Mr. Feldman, 'This is not right. I didn't say this.'

"Q. Then you were talking to Mr. Feldman?

"A. I beg your pardon—to Mr. Layton.

"Q. Just one more subject matter. You said something about Birmingham yesterday, didn't you?

"A. Yes, sir.

"Q. Do you remember what you said?

"A. No, sir. I have forgotten what I said.

"Q. Can you service Birmingham if Sylacauga is operating?

"A. I could print for them, if that is what you mean, sir.

"Q. If Sylacauga was operating and transportation costs were passed onto the customer, then certainly in Birmingham, in Chattanooga, Huntsville and in Montgomery, there would be substantial savings to the publisher, isn't that true?

"A. If he were given the benefit of the savings and the price he is paying would not increase and so on, subject to those qualifications.

"Q. Assuming that all of the savings were passed down to him, the savings would be substantial, isn't that true?

"A. Yes, sir, they would be fairly substantial, I think.

"Q. As long as this order continues to operate, those savings cannot be effective; isn't that true?

908 "A. Those savings which are based on the assumption that they would get them, could not be effective.

"Q. Do you know of any good reason why the publishers in those towns which I have just read should pay a higher price through a denial of transportation savings so that you can operate without the competition of Sylacauga?

"A. No, sir. I don't know of any reason why they should have that attitude.

"Mr. RAICHLE: That is all.

"RECROSS EXAMINATION

"By Mr. FELDMAN:

"Q. Yesterday, Mr. Hornady, you were shown a booklet which has been marked as Defendants' Exhibit A, I believe, which contained projected figures. Just referring to that booklet, when was the first time that you saw that projected figure as contained in the booklet marked Defendant's Exhibit A?

"A. Mr. Feldman, I don't remember seeing any booklet yesterday.

"Mr. LAYTON: Could you show the witness Defendants' Exhibit A?

"Q. Mr. Hornady, I show you Defendants' Exhibit 904 A and ask you now when was the first time that you saw this booklet or series of pages here which contains projection or comparative statement of projection of annual sales and net income, 'loss' in a bracket and Note 1?

"A. I don't think I ever saw that booklet. I remember that a sheet of paper was handed me yesterday. When I have seen previous sheets of paper, I don't even know that I ever saw that exact sheet of paper because, as I say, the only thing that I particularly noticed were these sales and travel expenses.

"Q. I am referring now to the whole booklet. Did you ever see this before?

"Mr. LAYTON: Why don't you ask him whether he ever saw that before?

"Q. Referring to this exhibit, did you ever see this before you came into this deposition yesterday?

"A. No, sir.

"Q. You no doubt recall seeing that?

"A. No, I don't recall seeing that. I see Price Waterhouse on that. I don't recall any booklet with Price Waterhouse's name on it.

905 "Q. Do you recall seeing the figures set forth on the page like this?

"(Mr. Feldman hands document to the witness.)

"A. I recall seeing a page like this, a sheet like this containing figures, but only once that I can identify as being the same sales expense and administrative salaries.

"Q. Where was that when you first saw a sheet resembling that?

"A. I think the first time I saw a sheet with those three items on it was a sheet that Mr. Smith showed me. That may have been his typing up of notes.

"Q. In other words, you do not know then whether it was the same sheet that is not before you in Defendants' Exhibit A; is that right?

"A. No, sir.

"Mr. FELDMAN: I have no further questions.

"Mr. RAICHLE: I have no further questions. As I understand it, you do not want to waive the signature in the deposition?

"Mr. LAYTON: No; I want him to sign it.

906 "(Whereupon at 12:30 p.m., the deposition was adjourned.)"

Mr. FELDMAN: May I be heard just one moment on the remarks of Mr. Climenko? First of all, the deposition points out that Mr. Hornady joined with Lang Features which is a southern agent, Color Print Corporation, in 1956, and that is a pretty long time for any knowledge about prices to be of such an advantage to him. The second point is when we are talking about fairness we are talking about fairness in regards to his selling. The question is, did Mr. Hornady indulge in any predatory practices, tie-ins, transportation absorptions, or any of the other factors? He certainly did not and there is nothing in the deposition to indicate that he did that. We further claim that

907 the order of this Court entered June 22nd, 1962, has had a salutary effect as far as the industry is concerned and for this reason, people competing down there know that any transaction they are going to enter into may well become a subject of judicial scrutiny and so tie-ins which previously existed between the featureites and the printing have, to a large extent, diminished, and this is one of the factors—in fact the

main factor—that permitted him to get this business. Heretofore he could never get an account in Norfolk, Virginia—something like twenty, twenty-five minutes from Newport News.

Mr. CLIMENKO: May I respond to just one point Mr. Feldman has made, because it seems to me that his effort proves this utility of the effort. He says that Mr. Hornady obtained this business without resorting to predatory practices. I think that begs the whole question. Mr. Hornady obtained this business, and I heard this testimony twice; once when it was given live and again today. Mr. Hornady has said that he got this business only because he had a geographical advantage. That was the only basis of his getting this business. Now why did he have a geographical advantage? He had the geographical advantage because, Your Honor has said by an order of this Court, and we are under the obligation of living with it and obeying it, Your Honor has said that we could not compete with Mr. Hornady in an effort to hold our business. And how has that happened? Because the Department of Justice comes into this Court, beginning in April of 1961, it fights the Civil War inside this case because it doesn't know whether it is tied to the north or the south, but it finally

908 asks for an order which says that our business is frozen in the northeast; that we cannot move it, and when we can't move it, it is there for Mr. Hornady to pick up, and that is the answer to it and that proposition cannot be answered and has not.

Mr. RAICHLE: May I make one observation Your Honor?

The COURT: Yes.

Mr. RAICHLE: There is an old saying that the truth comes out even in affidavits. This morning Your Honor inquired as to whether or not, in the course of Mr. Hornady's solicitations, he exhibited or made mention of Your Honor's order, and Mr. Feldman with more zeal than responsiveness, evaded rather adroitly a direct answer to Your Honor's question but the atmosphere of his answer was, "Oh no, no, Mr. Hornady wouldn't do a thing like that." I asked Hornady repeatedly if he had mentioned to the persons who were the subject of his solicitations and, in the course of his solicitation, the fact that his competitors were under restraint. Grudgingly he admitted they had talked to some of them about it. He couldn't remember, as he put it, a specific conversation, with

that facile forgetfulness of his, but it did develop that he had mentioned to certain whom he called by name. Now Mr. Feldman says that the order was of salutary effect because everybody in this district in the south knew about Your Honor's order. How did they know about it? Does it make any difference? Why they knew about it because it was published in the trade papers—in haec verba. It was a subject of conversation by everybody. It was an important subject of knowledge,
 911 and more importantly was a competitive advantage availed of repeatedly and is being availed of today, and was on the day that Judge McMahon found that the evasive, pampered and privileged, harbored and spoonfed Hornady was a fugitive from our subpoena. Now right here in this finding—and I offer it in evidence as a part of these proceedings—Judge McMahon found in these words that Hornady was evading the subpoena. He found that he had been served with the subpoena in the face of an affidavit by Hornady that he had not. In the face of a representation by his lawyer that he was too ill to appear. Now this man has availed himself of a competitive advantage to which he is not entitled. He has shown proclivities to flout the process of the Court when it is directed to him, but to get under the cover and the haven of it when it is to his
 912 advantage, and I think the Department of Justice is in big business—in low business—to put their stamp of approval on this man's course of conduct and to offer to him the power of Government to destroy the company, International Color Printing which they told Your Honor must be preserved for the benefit of the citizens of Wilkes-Barre and the people who worked in that community.

THE COURT: Let's call the witness now. I don't need any more comment on this.

PAUL LYNDE, called as a witness and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. FELDMAN:

Q. Will you please state your name again for the record?
 A. Paul Lynde.

Q. Where do you reside, sir?
 913 A. San Bernadino, California.
 Q. And what business, if any, are you engaged in?

A. I am employed as business manager of Acme Color Print Company.

Q. What exactly does your job entail?

A. Under the corporate president, I have responsibility for the total operation.

Q. Are you familiar with all the aspects of production and sales by Acme Color Print?

A. I am.

Q. And how long have you held this job, sir?

A. It will be ten years January 3rd of 1963.

Q. And prior to that time what type of work did you do?

A. Newspaper accountant.

Q. What business does Acme Color Print Company engage in?

A. Acme is a printer of colored comic supplements for newspapers.

Q. Is it engaged in any other type of business?

A. No, sir.

Q. Now presently what is the volume production of Acme?

A. Seven million seven hundred thousand four-page standards per week.

914 Q. How long has Acme been in business?

A. It is now in its thirty-eighth year.

Q. Will you please define for us the facilities of Acme for printing color comic supplements?

A. Well the operation occupies a one-story building 77,000 square feet; it has three major operating departments; a stereotype room, press room and a shipping or mail room. In addition there is an office force, a maintenance force both for equipment and the building, and a warehouse force.

Q. How many employees does it have?

A. 110.

Q. When you say 110, does that include the administrative employees also?

A. Yes, that is true.

Q. As to the presses, how many presses?

A. Four presses in operation at the present time.

Q. Now how many people do you have in the administrative end of the business?

A. The president, myself and two female clerks.

Mr. RAICHLE: I'm sorry, what?

The WITNESS: The president, myself, and two female clerks.

By Mr. FELDMAN:

915 Q. Does Acme employ any salesmen at all?

A. No, not as employees.

Q. Who takes care of the sales end at Acme then?

A. The president and myself do virtually all of the selling directly.

Q. What states does Acme have accounts or does it sell in?

A. Well, our customers are spread over the eleven western states, plus some in the State of Texas. We do not, by any means, print for all the newspapers in that area.

Q. How many newspapers do you print for presently?

A. 92.

Q. Now I believe you mentioned something about the presses, there being four. Is that correct, sir?

A. There are four presses.

Q. Now as to the four presses, can you give us a brief description of each?

A. The smallest press of the four is what is called a single width, a Decktor type. It is five decks high and two plates wide. Two presses are quite similar to each other, they are four plates wide and four decks high. These are known as double width presses. The fourth press also is four plates wide but is not a Decktor type press. It is what is known as a unit type press, and it consists of four units.

Q. Now as to the four presses you have just described, what is Acme's present work schedule?

A. Well we operate all four presses, two shifts per day, five days per week. That is one day shift and one night shift.

Q. Now what does the term "Manning the presses" mean to you?

A. Manning refers to the number of persons necessary to operate the press.

Q. Will you please describe for us the manning requirements at Acme in operating the four presses?

A. Well, there is some variation. The small press is required to be manned by either five or seven persons, depending upon what is being produced at the particular time. The other three presses, or the larger ones, are all required to be manned by either six or eight persons, depending on what is being produced.

Q. Now manning, how is that determined? Over any given period of time, at Acme?

A. By labor negotiations. It is a subject of contractual agreement.

Q. And are wages also a subject of labor negotiations?

917 A. Oh, yes, manning, hours, working conditions are negotiated all at one time.

Q. Now, after your labor costs at Acme, is there a relationship between the two, namely, wages and manning?

A. Oh, very definitely. Do you mean which is more important?

Q. No, is there a close relationship?

A. Yes, they are negotiated. There is an interaction in negotiations. A higher—

Mr. RAICHLE: I can't hear him.

Mr. FELDMAN: Suppose you speak up.

The WITNESS: I didn't get that word. What is the word?

Mr. RAICHLE: Manning is like manning a ship? People running it, is that right?

Mr. FELDMAN: That is right, number of people.

By Mr. FELDMAN:

Q. Have you participated in labor negotiations on behalf of Acme?

A. Yes.

Q. Now in such labor negotiations, are the salaries or wages of printers who do colored comic supplement work at 918 Acme, is that considered a separate industry?

A. No. Well, the contracts apply only to Acme.

Q. But is it considered a separate industry?

A. No.

Q. Is it considered part of any industry?

Mr. RAICHLE: I don't want to object but we seem to be a little pressed for time but "considered"—considered by whom, the Department of Justice?

Mr. FELDMAN: I ask the man in labor negotiations. That is all I am talking about, the labor negotiations at Acme.

The COURT: From a corporate standpoint?

Mr. FELDMAN: That is right.

The Court: Answer that.

The WITNESS: Yes, it is affected by and considered part of another industry.

By Mr. FELDMAN:

Q. Now what other industry is that?

A. Printing and specifically newspapers.

919

By Mr. FELDMAN:

Q. Now, based on your experience in labor negotiations, is there any correlation between the newspaper industry and the wages and hours of the color comic supplement workers or printers at Acme?

A. Yes, very definitely.

Q. Will you tell us what that relationship is?

A. Well, in California, in the case of Acme Color Prints, specifically there are clauses in our labor agreements which will adjust our wages, the wages in effect at Acme automatically without negotiations in the event that during the term of that contract there is an increase in the newspaper scale in the City of Los Angeles.

Q. Now, at the present time what is the total capacity or maximum capacity of Acme as to the volume of production?

A. 14,000,000 fours a week.

Q. At the present time what percentage of that maximum production are you using?

A. Slightly over half; about 55 per cent.

Q. Mr. Lynde, I show you Exhibit A which is attached to the moving papers in this motion and ask you whether pursuant to my request you studied the projections contained therein and compared the same with Acme's course in operations?

A. I did.

Q. Now, in making your comparison, did you use any work sheets at all?

A. I did.

Q. Do you have such a work sheet with you?

A. I do.

Q. Just give me the work sheet.

Mr. RAICHLE: May I make one interruption, Your Honor, a matter of projections. Our Exhibit A, projection number one says that based on a production, annual production, since we are all talking in terms of weekly volume of fours I am wondering if it wouldn't be informative and helpful to your Honor to note that the top of projection one that the weekly of fours which resulted in the \$178,000,000.00 figure is 3,434,000, mainly the amount permitted under your Honor's order, and the weekly volume of fours resulting in the annual 921 volume 409,957,600, in column 2 is 7,830,000 fours a week. Excuse me.

The COURT: All right.

Mr. FELDMAN: I ask that this piece of paper handed over to me by the witness be marked as Plaintiff's Exhibit 1 for identification.

(Whereupon, paper was marked as Plaintiff's Exhibit G-1 for Identification.)

The COURT: That column 2, Mr. Raichle, is roughly what Acme says?

Mr. RAICHLE: I think that is what Acme says.

Mr. FELDMAN: Yes, that is correct.

By Mr. FELDMAN:

Q. Now, looking at Exhibit A and looking at the headings as to volume of production, what comparison, if any, can you make?

922 A. Between Acme and projection two, you mean?

Q. Suppose you tell us.

A. Projection number one—I don't have Exhibit 1, I have my work sheets.

Q. I see. Just base it on what you remember then.

A. Projection number one is approximately one-half the volume of work being done at Acme and projection number two is almost equal to Acme's production. I believe one million per year between Acme's production and the production shown on projection number two.

Q. Now, did you go down the respective items set forth or the categories, as to production costs and selling costs in Exhibit A?

A. I did.

Q. And did you compare them with the costs and operations at Acme?

A. With reference to projection number two, I did compare them, yes.

Q. Will you start at the top and go down with each item and tell us what, if anything, you found?

Mr. RAICHLE: I would like to record an objection. If this is impeaching our projections, if that is what is intended to 923 be done with this testimony, he hasn't laid the basis to compare it with Acme without making a basic showing that costs at Sylacauga would be comparable and negatively in existence, the facts and circumstances to make the comparison; I object to it.

The COURT: I am fully aware of the conditions you are running into down there. It is a new business and it is not well established, I know that, but I will receive it, Mr. Raichle and let you inquire as to the force it has. I know there are many other considerations.

By Mr. FELDMAN:

Q. All right. Going now to sales; what, if anything, did you find or determine?

A. The annual sales revenue shown in Projection No. 924 2 is approximately one-half million dollars less than the current annual sales revenue of Acme Color Printing Company.

Q. What, if anything, do you attribute that to?

A. I don't believe the figure shown in Projection No. 2 is meaningful.

Mr. RAICHLE: What?

The WITNESS: Meaningful.

Mr. RAICHLE: I move to strike it out; meaningful to whom?

Mr. FELDMAN: I object, your Honor, to that remark. This man is as fully qualified as anyone here to talk about it.

The COURT: I will sustain the objection.

Mr. FELDMAN: I am going to ask the witness to read this.

The COURT: I consider that is not a fair expression of the corporate business. Have you ever seen the plant in Sylacauga?

The WITNESS: No, sir.

The COURT: You know nothing about the business setup?

The WITNESS: Only from the records of this case.

925 The COURT: All right.

By Mr. FELDMAN:

Q. Suppose you tell us the reason that you have, if any?

A. Redeeming here the projection in the sense it is an estimate, it is no more a standard procedure in any work-making standards or estimates to make optimum use of the information at hand, all of the best possible information you can use. I am aware that any printing done at Sylacauga would be transferred from some other printing plant, that is understood. Projection No. 2—

Mr. RAICHLE: I object to that, if your Honor please, how can he make a statement like that?

The COURT: You mean you assume?

The WITNESS: I do make that assumption.

Mr. RATCHLE: That is a lot different than a man under oath saying, "I am aware it will be."

The COURT: In your projection or analysis you are assuming certain facts?

The WITNESS: Yes.

926 The COURT: All right, you may proceed.

The WITNESS For the purpose of this comparison I am assuming that printing under Projection Number 2 would consist of jobs now being performed at other printing plants and therefore the specific prices being charged for those jobs that exist and are available and according to the notes attached to Projection 2, they were not used, therefore, the best information was not used.

927 Q. Now, in the event specific runs were mentioned, or assuming such runs were mentioned, outside of the revenue, would any other information be available to you?

A. Yes, very definitely. The circulation of a newspaper, as well as the number of pages being printed in its supplements are both of major importance in determining cost and therefore in determining prices; also, in addition to the circulation and the number of pages, the actual page-by-page makeup of a group of runs being printed in the particular plant could be of great importance.

Q. Now, going to the next item, what item would that be?

A. The next figure on Projection 2 refers to payroll.

Q. Now, what did you find in analyzing that?

A. First of all, to make a comparison with Acme with respect to the payroll, as well as certain other figures in Projection 2, I found it helpful to make certain rearrangements. I didn't change the amount of any figure or of the total but I made regroupings in order to make comparisons possible.

Q. What regroupings did you make?

A. In the case of payroll I used the sum of the first two items in Projection 2 under cost; that is, the payroll figure plus the benefits figure, a total of \$404,000 and some odd dollars.

928 Q. Having combined the two, what, if anything, did you find or determine?

A. That that figure is approximately \$300,000 per year less than the comparable for Acme Color Print Company.

Q. Can you estimate what you think figure number 2 should be, based on your experience?

A. I think it should be lower yet. I think it should be approximately fifty percent of the comparable figure at Acme.

Mr. RAICHLE: What figure are you talking about?

Mr. FELDMAN: Payroll and employee benefits combined.

By Mr. FELDMAN:

Q. I will ask you again; based upon your experience, what do you think the figure should be in Projection 2 as to payroll and employee benefits combined?

A. \$380,752.00.

Q. How do you arrive at that conclusion? What are the reasons for that?

929 A. I have assumed that the six runs to be printed under the figure shown in Projection No. 1 would be typical in size to the runs to be added for purposes of Projection 2. What I am saying, I have assumed we are dealing with circulation in large numbers, numbers of large circulations, this is the assumption. With that assumption, and with the information I also have from the record in this case about press management at the Dunkirk plant, about stereotype production quota requirements, and about the speed of the press installed at Sylacauga, together with the size of the circulations of the newspapers; all of these factors operate to reduce labor costs as compared to Acme Color Print Company. Acme operates four printing presses. It serves 92 newspapers. The volume of production in Production 2, which would be equal to Acme, based on my assumption, as to the size of the newspaper, would involve something like 15 or 20 newspapers. This would, by reason of requiring fewer make-readies and permitting longer press runs, reduce the hours of press operation by about forty-five percent as compared to Acme Color Print. In other words, what I am

saying, is that the printing could be done at Sylacauga 930 under Projection 2, under the assumption I made, could be done in half the time it takes us to do the same printing at Acme. This is a major factor in my conclusion that labor costs should be one-half.

Mr. RAICHLE: One-half of what?

The WITNESS: One-half of Acme's.

By Mr. FELDMAN:

Q. Going to the next breakdown under production costs; what would that be?

A. The next item is newsprint cost.

Q. Did you make a comparison to Projection 2 there?

A. I did.

Q. What, if anything, did you find?

A. The figures shown in Projection 2 is approximately equal to the newsprint cost today at Acme Color Print.

Q. Do you accept the figure in Projection 2 based upon Acme's and your experience?

A. I think it should be lower.

Q. Will you tell us the reasons why?

A. The price of newsprint across the county is fairly uniform, \$134.00, \$135.00 a ton. Wherever the printer may be located with respect to the mill, this is generally true, and that 931 price would be at the printer's plant. In other words, the mill pays the freight to the printer's plant. The Sylacauga plant is in the immediate area of a newsprint mill. I assume newsprint from that mill would be used in Sylacauga. Based on that assumption, there certainly should be some savings because of the proximity. This is a matter of general knowledge in the printing business, but I can't cite any specific instances, but I know—I am satisfied that it is possible, that it is occurring, that printing plants which are located within up to six or eight hours by highway of a mill are able, by taking delivery of the paper at the mill rather than at the plant, and paying for the transportation costs themselves.

The COURT: Isn't that directly contrary to the evidence in this case?

Mr. FELDMAN: I don't think so.

Mr. RAICHLE: Yes, it is.

The COURT: I think I explored that. I expected that theory, that it might be an advantage there. I was told it doesn't make any difference if it comes from New Brunswick or 932 Sylacauga.

Mr. FELDMAN: That is the point he explained before, when he took the stand, the price would be more when it goes to the plant than if you make arrangements to pick it up yourself. I believe the testimony of Mr. Clinton bears the point out. He said he didn't look into it at all, you could get a concession because of that. I have an affidavit here. Mr. Raichle has a copy of that, I got it this morning. I will submit it to you. It is from the Coosa River people, telling what they have done in the past with other customers.

The COURT: All I remember is that it is a strange business, that pulp business, newsprint business. It certainly seems to

be controlled in some manner other than by the ordinary law of supply and demand and location. We will pass that.

933 That is one segment of your analysis.

By Mr. FELDMAN.

Q. Now, based upon what you have told us, and your experience and knowledge, did you reach any determination as to what you think the figure should be in Projection No. 2 as to newsprint?

A. Yes. There is one other factor involved in that decision however, that I didn't mention.

Q. Will you mention that?

A. Apart from the price of newsprint or the cost of it at the printer's plant, there is the question of consumption rate of newsprint in pounds per thousand fours, and again I am assuming these are comparatively large press runs as compared to Acme Color Printing. If that is true, the waste factor will be lower, in which case the rate of consumption will be lower. Therefore, if both the cost and the rate of consumption are lower at Sylacauga as compared with Acme, the amount of money spent for the newsprint for the same production would be less.

Q. Now, have you reached any determination as to what you think the figure should be in Projection No. 2 as to newsprint based upon what you related here today?

934 A. Yes, sir.

Q. What figure have you—

Mr. RAICHLE: I submit he should tell how he did it.

Mr. FELDMAN: He just told you how he did it.

The COURT: He was making certain assumptions.

Mr. RAICHLE: He must make an assumption as to the degree of waste and the degree of consumption.

The COURT: Can you state that?

The WITNESS: Yes.

The COURT: Do that.

The WITNESS: I assume a cost at the printer's plant of \$132.00 per ton.

Mr. RAICHLE: What?

The WITNESS: \$132.00.

Mr. RAICHLE: There is no basis for such assumption.

The COURT: He is expressing an opinion. This man's opinion is apparently based on some experience.

The COURT: You have an affidavit, if you have it, that doesn't justify that statement.

935 Mr. FELDMAN: I never looked at it, it just came in.
Mr. RAICHLE: Look at it now.

Mr. FELDMAN: I want to know his opinion.

Mr. RAICHLE: Here is a man who says he has an affidavit that pertains to this thing. If that affidavit is in conflict to what he is going to say—

The COURT: Go ahead, state in your opinion—you think the cost of the Sylacauga plant was \$132.00 a ton, is that right?

The WITNESS: That is my best judgment.

The COURT: Go ahead.

The WITNESS: I assume the consumption rate of forty-seven and one-half pounds per thousand four-page standards.

Mr. RAICHLE: Would you give me that figure?

The WITNESS: Forty-seven and one-half pounds per thousand four-page standards. Applying these figures to the production gives a newsprint cost \$30,000.00 per year less than the figure shown on Projection 2.

936 By Mr. FELDMAN:

Q. Going to the next item, namely ink; did you analyze the figure under Projection No. 2?

A. I compared it with the cost of ink at Acme.

Q. What conclusion did you reach?

A. It is somewhat lower in dollars and in cents per thousand both, than the cost at Acme.

Q. Based upon your experience, do you think the figures should be otherwise in Projection No. 2?

A. No, I do not. It is my understanding in the general course of our business that Greater Buffalo Press has some connection or some interest with the company which makes ink and certainly they would use a lot of it. So I think it is reasonable to assume their cost would be lower than ours.

Q. You have no quarrel with that figure?

A. Not in Projection No. 2.

Q. Did you examine the figure in Projection No. 1 as to ink?

A. I did.

Q. Did you examine the note in Exhibit A regarding that Projection No. 1?

A. I did.

Q. What was your determination in regard to the figure in Projection 1 as to ink?

937 A. I disagree completely with the statement in the note to the effect that there is a greater wastage of ink when the press is operated at less than capacity than there is when the press is operated at capacity. I think the figure in Projection 1 is wrongly related to the one in number 2.

Q. Do you have any reasons for that conclusion?

A. Well, I know if a press is operated at less than capacity in terms of amount of time operated, that is, fewer hours than it might be, it doesn't use any ink while not running; it doesn't waste any ink. Ink does not evaporate. I know if the press is operated at less than capacity in terms of the number of plates mounted on it, this ink distribution is changed so that the ink is put on that area of the press where plates are mounted; there is no waste there. There would be a greater waste factor on ink on shorter runs than compared with longer runs.

Q. How would that come about?

A. Because of the waste factor, the number of the copies wasted during registration would be approximately the same, but total production being less, the waste factor per thousand would be much higher.

Q. Going to the next subject, what is that on your
938 list?

A. We have supplies.

Mr. RAICHLE: What did he say the \$59,838.00 figure should be?

Mr. FELDMAN: I didn't ask him that.

By Mr. FELDMAN:

Q. I will ask you, did you make any projection or estimate as to what you think the ink item should be in Projection No. 1?

A. Only in the sense that I feel the ink cost per thousand would be the same under both total productions, assuming that the size of the runs were about the same.

Q. Now, what is the next subject matter you considered?

A. The next item is supplies, and here again I regrouped my group of supplies with freight.

Q. Why did you do that?

A. There is some difference in accounting systems. It is the common practice in some plants to consider freight on incoming supplies as a separate cost, labeled freight. In other operations the freight on incoming supplies is added to the cost of the supplies. It is classified as a supplies cost rather than

939 freight. In order to avoid comparing, I put them together.

Q. Having combined them together, what determination did you reach as to the combined total figures?

A. The figures twice the comparable figure for Acme Color.

Q. What, if anything, did you attribute that to, based on your experience?

A. I think the figure is wrong.

Mr. RAICHLE: If Your Honor please, I don't like to object, but how in the world can we make proof that way? Your Honor understands this freight item we are talking about is incoming freight, supplies coming into the plant, not the shipment of the fours of the color comics supplements. How can we compare a place undescribed in California with these two places. If he can do it, there should be a basis laid for it that he has made in examination, that he knows from what point the incoming freight in each instance is coming from, what the quantity is, at what rate, under what circumstances, just to say, I think that is wrong.

The COURT: I assume he is going to give us the basis for it?

Mr. FELDMAN: He will, but may I point out, this projection is based upon assumptions and estimates. This is right in the front, "Reliability of which is dependent on future events and transactions. As independent accountants we are unable to express an opinion on these projections." What I am saying to the Court is this. There is an issue of fact as to opinion or as to estimates. He is entitled to his opinion, that is all it is. I am going to ask him what the reasons are. All these objections as to why he can't give his opinion I think only go to the probative value that the Court should place upon the opinion, nothing more.

The COURT: You may continue.

941 By Mr. FELDMAN:

Q. Going to the two items which you combined, namely, freight and supplies, would you give your reasons which made you reach the determination that Projection No. 2, as to the two combined items, was higher?

A. I think it is too high. I don't think the freight and supplies costs would amount to that much money.

Q. At Acme, what items are considered freight, what items are considered supplies?

A. Generally speaking, we include freight as a cost of the supplies itself. The freight on the supplies is part of the cost of the supplies.

Q. In other words, this is not freight on supplements you are shipping out?

A. No.

Q. What other matters did you consider under supplies?

A. It was to avoid confusion on that point that I combined them.

Q. Well, at Acme, what are considered supplies?

A. Stereotype, for example.

Q. Would that include the metal, the nickel used in the stereotype operation?

A. Both.

Q. What item would have freight applied to them at 942 Acme?

A. Almost all supplies coming in would have a freight cost. Very few things are bought F.O.B. our plant. Most things are bought F.O.B. seller's plant.

943 Q. Now, based upon your experience in the industry, do comic color supplement printers, to your knowledge, use the same supplies in the printing supplements?

A. The major supplies, yes. For example, newsprint constitutes 55 to 60 per cent of the cost of the finished supplement. Everybody uses newsprint.

Q. Now, what is the next item you considered?

A. The next item on the Projection was depreciation.

Q. Did you make any comparison of the figures in Projection No. 2 as to the cost at Acme of the same items listed there?

Mr. RAICHLE: If your Honor please, I object to that as irrelevant. Now, depreciation is an accountant's device. It is a reality, however, but it is related to the assets involved in a particular operation and, if I owned the Lafayette Hotel I am making a projection and one of the items is depreciation, and somebody else owns the Statler—five times as big—and the one on depreciation dollarwise is bigger than the other.

944 it is of no relevance at all. The depreciation figure is directly related to the one and only thing it can be related to; the assets being depreciated.

Mr. FELDMAN: May I be heard?

The COURT: I don't think it is necessary. I understand your point but there is a note here by your accountant with respect

as to how the depreciation was arrived at. I expect you read that.

The WITNESS: I did.

The COURT: And you, at least, are generally familiar with the type of things that are being depreciated in this plant?

The WITNESS: Yes, sir.

The COURT: I understand your point. It goes to the question of the weight of this evidence and I expect you will have your usual searching examination as to that point. All right.

Mr. RAICHLE: To the extent that I can make it so,

945 I will.

By Mr. FELDMAN:

Q. Mr. Lynde, will you tell us what you found?

A. Well, to begin with, the investment and equipment indicated in the notes, \$390,000.00, but the depreciation figure is based on investment of 500,000; 110,000 yet to be expended. In other words, apparently the plant is not ready now to print. There is still more equipment to be installed. On the basis of \$500,000.00, ten-year life, \$50,000.00 a year is the proper charge. The only comment I have is that the depreciation at Acme Color Print Company, on an investment of \$475,000.00 is \$23,600.00 per year, slightly less than half. The difference is accounted for by the longer life used at Acme Color Print Company. We use a much longer life than ten years. The reason we use longer life is that we want our costs to be as realistic and as low as we can make them and we think printing presses last longer than ten years, among other things.

Q. Now, based upon this method used for depreciation at Acme, and only the method used at Acme, what figure, if any, would you get in Projection No. 2?

946 A. \$25,000.00.

Q. Now going on—

Mr. RAICHLE: Now, that can't possibly be right, on the face of it.

The COURT: I am not accepting these as facts you know.

Mr. RAICHLE: But I think; could I just—

The COURT: I do think that it would be helpful to the Court to have some basis other than the unique practice of Acme of running the depreciation over a longer period. I assume there is more solid grounds than that.

Mr. RAICHLE: I know I shouldn't argue—

The COURT: I say that that is up to counsel, but the full statement of \$25,000.00 based upon Acme's history of depreciation over a longer period than ten years, that isn't the question to me at all.

By Mr. FELDMAN:

Q. Do you have any industry knowledge as to how
947 the depreciation is taken in the other parts of the printing industry?

A. Yes.

Q. And will you tell us what your knowledge is?

A. I know there is wide variation in practice. There is newspapers and printers. Generally speaking, I think the newspaper publishers have tended not to accelerate depreciation. There are some exceptions, but generally speaking the practice of the trade is similar to that at Acme Color Print Company.

Q. And how long a period do you use at Acme?

A. We do not use a composite rate. By that I mean, different items are depreciated over different periods of time, depending upon the item itself. For example, a printing press, perhaps fifteen years; a building, perhaps twenty-five years; a typewriter, perhaps five years, so on.

Q. Now, going on to the next item, what item did you examine?

A. The next item is repairs.

Q. And what, if anything, did you find in regard to repairs—I guess machinery and equipment, is that correct, sir?

A. Yes, sir.

Q. Now, what did you find?

948 A. The figure of \$45,000.00 for Sylacauga compares with \$12,000.00 for the current year for Acme Color Print Company.

Q. Now, this difference, what if anything did you attribute that to?

A. I think the Projection No. 2 figure is too high.

Q. And how did you reach that conclusion? What are the reasons?

A. Well, there are several. There should be, I think, a closer comparison with Acme for several reasons. We are operating more smaller printing presses. The chances for breakdown and repair and amount of wear should be somewhat greater. In the case of Sylacauga, we are talking about a comparatively

unused plant. Repairs and expenses in the initial year or two after perhaps a few weeks of what we call getting the bugs out, should be comparatively low, as compared to later years after the equipment has been used more. I just cannot conceive of there being \$45,000.00 of repairs in the first year.

Q. Did you reach any estimate of what you think the repairs should be?

A. I didn't specifically, except in this sense.

Q. Pardon?

949 A. I did not specifically, except in this sense. I arbitrarily said that the difference between the two operations should be cut in half.

Q. And what figure would you give to Projection No. 2?

A. That would give \$17,000.00. I am sorry, that would reduce it by \$17,000.00 and give a figure of \$28,000.00.

Q. Now going on to the next item, which one did you consider?

A. Power.

Q. And what determination, if any, did you reach in considering that subject?

A. Again, the total cost of power shown is twice the comparable figure, approximately, for Acme Color Print Company.

Q. Now, do you accept that figure in Projection No. 2?

A. No, I do not accept it. I think it is too high.

Q. What are your reasons for that?

A. Well, we are talking about essentially similar operations, the differences between the two. The differences in the size of the newspapers being served and the differences in the number

950 of presses being used would tend to increase the comparative power consumption at Acme rather than reduce it. What I am saying is, I don't believe we should use less power than Sylacauga. Slightly more, perhaps, in terms of the amount of energy being consumed. Now, it is possible—I do not know what the price of power is in Alabama, I know in California 1.4 cents per kilowatt hour is the effective rate. I can conceive of there being a higher price in Alabama, but not twice as much, so I think again the difference should be cut in half.

Q. Now, what figure would you arrive at?

A. I reduced it 5,000 to a new total of 17,896.

Q. What was the next item you considered, Mr. Lynde?

A. The figure is labeled "Real Estate"; according to the notes it included the building, depreciation, taxes, insurance, repair, the operation of the building, equipment.

Q. Have you ever seen the Sylacauga Plant?

A. No, sir.

Q. What did you base your assumptions upon then?

A. Just the amount of the investment and the capacity of the plant, what it is going to produce.

Q. And what conclusion did you reach?

A. I have no quarrel with that figure.

951 Q. No quarrel at all. Now go on to the next item.

A. The next item on Projection No. 2 is the plant's miscellaneous. I do not have a comparable figure at Acme and I am unable to make any comparison.

Q. Did you consider any of the items under "Selling-Administrative"?

A. Yes.

Q. What items did you consider?

A. Selling, travel, telephone, telegraph, postage, interest.

Q. Now, in regard to travel, what expenses do you have at Acme?

A. \$3,600 this year.

Q. And what does that account for, what type of travel?

A. Well, it is all the travel that is done on company business by company employees.

Q. Well, is that sales travel?

A. Partly.

Q. And what other types of travel would it entail?

A. Well, it includes attending publisher's conventions, one accountant's convention.

Q. Now, did you consider each one of the items under "Selling-Administrative"?

A. Well, the items are selling, travel, telephone, 952 telegraph, postage, interest, miscellaneous.

Q. All right, now—

Mr. RAICHLE: You left out a couple.

The WITNESS: Those are the ones I considered. I made no attempt to study administrative salaries. This is a question not dependent on factor I know about.

By Mr. FELDMAN:

Q. You considered sales and travel, telephone and telegraph, postage, interest and miscellaneous, is that correct, sir?

A. Yes.

Q. Did you consider them separately or together?

A. Both.

Q. Tell us which ones you considered separately and which ones you considered combined?

A. All of them.

Q. You combined all of them?

A. Yes, sir, and I also considered them separately.

Q. Tell us your conclusions each way.

A. Well, in general, I think the figures are too high. They are in most cases twice or more than the comparable costs at Acme, and I feel they should be reduced by at least half the difference, to become more realistic.

593 Q. Will you go through each heading and tell us the reasons for your conclusions?

The COURT: Does it make some difference that this is a new business, established in a new area, as against your Acme that has been going on for thirty years, don't you think—

The WITNESS: I do think it makes a difference, yes.

954 The COURT: Would you tell us what that difference is?

The WITNESS: Well, on that specific point, it seems to me that the important factor is that this business that we are talking about, printing at Sylacauga, have been sold. It is being printed now; it doesn't need to be sold.

The COURT: What do you mean, it is sold?

The WITNESS: These jobs that would be printed at Sylacauga are now being printed.

The COURT: Is there any difference in the location? You just heard today about some man down in Southern Color taking all the work out of Wilkes Barre. Is there a difference about being produced in Sylacauga with reference to some other location?

The WITNESS: With reference to selling expense, it seems to me that selling has been done.

By Mr. FELDMAN:

955 Q. Will you go through each item and tell us the reasons, if any?

A. The same comment with respect to travel. The fact that the runs are now held, are now being printed would reduce the

amount of travel expense. I don't mean to suggest there be any. I am suggesting that there probably—

Q. What do you say, would that be initially or would that continue indefinitely?

A. With respect to the volume of business covered under Projection No. 2 only.

Q. Now, are there any other items that you could set forth your reasons?

A. No, I think that covers it with respect to selling and travel.

Q. Now, as to the broader heading "Selling", you did not consider administrative. What did you think the figure should be?

A. I think the \$25,000.00 shown for selling and travel expense in two items on the Projection, a total of 25,000, should be 17,000.

Q. Now, after you have completed your study, did you tabulate and put in the form of what you think the figure should be as to which you gave testimony previously?

956 A. Yes, sir.

Q. Do you have any paper with you which obtains that information?

A. I do.

Q. Is that what you prepared?

A. Yes, sir.

Q. Now, I notice it says—well, suppose I have it marked for identification?

(Whereupon, paper was marked Plaintiff's Exhibit G-2 for identification.)

Mr. RAICHLE: Can I see it now?

Mr. FELDMAN: I will be wanting to put it in evidence.

Mr. RAICHLE: Could I see it before?

Mr. FELDMAN: I just wanted to get the other one.

By Mr. FELDMAN:

Q. Referring to Plaintiff's Exhibit Number 2 marked for identification it has a heading "Working Notes" attached in writing inside. Is that the working notes referred to in Plaintiff's Exhibit Number 1 marked for identification?

957 A. Yes.

Mr. FELDMAN: At this time I would offer in evidence Plaintiff's Exhibits Numbers 1 and 2.

The COURT: You want to offer these, Mr. Raichle. You want to look these over, Mr. Raichle.

Mr. RAICHLE: Yes. I know now that I want to object to them.

The COURT: We will take a recess for a few minutes.

(A short recess taken at 3:40 p.m.)

958

PROCEEDINGS AFTER RECESS

The COURT: You were at the compilation.

Mr. FELDMAN: Yes. We will now proceed. The figures he put down here are only half of what he estimated—well, I will have the witness testify to that.

DIRECT EXAMINATION

Q. By Mr. FELDMAN (Continued):

Q. Referring now to plaintiff's Exhibit Number 1 as to what figure in the rates which you inserted, should be placed in Projection No. 2 based on your experience, how did you arrive at those particular figures in comparison with the testimony you gave here?

A. Well, there was some difference; it is not the same in all cases.

Q. A. Will you explain that difference, if any?

adjusted in the case of the payroll and benefits adjustment, I adjusted the Projection No. 2 figure to an amount approximately fifty percent of the comparable figure at Acme Color Print Company on the basis of factors I described. In the case of the newsprint cost I reduced the figure by \$30,000.00 on the basis of the assumed cost of newsprint at the printing plant the basis of the assumed consumption rate which I stated.

Mr. RAICHLE: When you say assumed, you mean assumed by you?

Mr. RAICHLE: Mr. Raichle: When you say assumed, you mean assumed by

Mr. RAICHLE: Well—

Mr. RAICHLE: Nobody else has assumed it. He has assumed it.

Mr. FELDMAN: The witness is testifying. He means he assumes it.

COURT: Proceed.

Q. By Mr. FELDMAN:

Will you continue, Mr. Lynde?

A. In the case of all of the other adjustments which are shown on G-2 I made a reduction of the figures in Projection No. 2 equal to one-half of what I felt was the disparity.

Q. Now, when you got through, what total figure did you get in regard to Projection No. 2 as opposed to the projection listed in Exhibit A?

A. Well, the net effect of my adjustment is to reduce the total cost of the operation by \$150,000 a year.

960 Mr. FELDMAN: I offer at this time in evidence plaintiff's Exhibits 1 and 2 for identification.

Mr. RAICHLE: I object to them both on the ground that no basis has been laid for them and it appears from the witness' testimony that his opinions as thus expressed are not grounded upon legal and competent considerations or facts established or assumed on the basis of assumptions described in any way that anybody could understand, that this is not the subject of expertise of this character and he hasn't been shown to have any expertise and at the very minimum a basic showing in admission of such a document has not been established.

The COURT: Overruled.

The CLERK: G-1 and G-2 marked in evidence.

(Thereupon Exhibits G-1 and G-2 for identification 961 were received in evidence.)

By Mr. FELDMAN:

Q. Now, Mr. Lynde, assuming that Acme were restricted to a volume of production of approximately 3,434,000 fours per week as stated in Projection Number 1, Exhibit A, and all other factors were the same as to Acme's operation, would Acme in such an event based upon your opinion operate at a financial loss?

Mr. RAICHLE: I object to that. There has been absolutely no basis, Your Honor, for that question.

The COURT: You are assuming that Acme was operating under the same conditions as at Sylacauga plant, is that correct?

Mr. FELDMAN: No. I am assuming first under his own condition he is going to project the amount of projection No. 1 and

I want to know what would happen as to Acme. I will 962 go on onto the other assumptions but I want to develop it on the basis of his experience. That is the first one.

Mr. RAICHLE: This is over my objection.

The COURT: Overruled.

Mr. RAICHLE: It is incompetent and no basis has been laid.

The COURT: Overruled.

Mr. FELDMAN: Will the reporter please read it back?
(Whereupon the reporter repeated as follows:

"Q. Now, Mr. Lynde, assuming that Acme were restricted to a volume of production of approximately 3,434,000 fours per week as stated in Projection Number 1, Exhibit A, and all other factors were the same as to Acme's operation, would Acme in such an event based upon your opinion operate at a financial loss?"

Mr. RAICHLE: Could I point out to Your Honor the
963 fatal defect in the question? He says "And all other factors are the same." He doesn't say the same as what. That is a pretty important point of departure. The figure assumed for the purpose of our projection is \$5.58 and a fraction thereafter predicated upon the average price received for the group of ones permitted under Your Honor's order to be printed at Sylacauga. Now, it appears that this gentleman gets much higher prices as is evidenced by the fact that his revenue from the 7 million is \$4,500,000 more than that projected for the same 7 million down at Sylacauga. Now, if the question assumes by the word "same" that he is getting the same price on his suppositions run indicated by the hypothetical question or
964 his supposition operation for a year on the basis of 3,434,000, that is one thing. If he is assuming he is getting the higher price so that the question with the use of the word "same" relates to the same price as he is getting in California, that is another, and I think counsel should point that out.

The COURT: I wish you would clarify that.

By Mr. FELDMAN:

Q. Assuming, Mr. Lynde, that Acme were restricted to a volume production of 3,434,000 fours per week and you received an income upon your present charges and all the other operating factors remaining the same at Acme, would Acme operate at a financial loss?

Mr. RAICHLE: Now, that permits the objection or calls for the objection or founds the objection, Your Honor, that this is irrelevant and immaterial and in addition to the other ground of the objection, not a proper way to seek to
965 impeach Projection No. 1. He is assuming an entirely different set of facts. I suppose that if he could charge the right

price and get it, you could operate on a million down in Sylacauga.

The COURT: Of course, the way this testimony is, it is based on a hypothetical question.

Mr. RAICHLE: I want to state the objection.

The COURT: Actually, he is attempting to persuade me so I do not think that any technicalities will prevail in this type of a lawsuit.

By Mr. FELDMAN:

Q. Mr. Lynde, do you recall the question?

A. Yes, sir.

Q. Will you give the answer?

A. I think under those conditions that Acme would be at the break-even point.

Q. Now, assuming that Acme were restricted to a
966 volume production of 3,434,000 fours per week and assuming also that Acme had no outstanding labor contracts and could go out and recruit labor anew and then assuming also that the runs at Acme were of comparable size and circulation as the runs in Projection No. 1, would Acme then operate at a financial loss?

A. No. It would be in a better position than under your first question.

Q. It would?

A. Yes.

Mr. RAICHLE: I move to strike that out. He says that you can go out and recruit labor anew. He doesn't say at what place and under what terms and conditions or on what basis.

The COURT: Well, I will grant you it is nebulous but I am letting it in.

Mr. RAICHLE: Very well, sir.

The COURT: You can persuade me the other way.

By Mr. FELDMAN:

Q. Will you tell us the reasons why you say they
967 would be doing—and when I say "they" I refer to Acme, will you tell us the reasons why they would be doing better?

A. Well, under your second question, your second hypothetical question, you indicated that the runs would be similar in size to the six runs considered under projection No. 1. These particular runs are considerably larger in circulation than the average and some of them are larger than any individual run

now being produced at Acme Color Print Company and again I want to emphasize that the length of the run tends to lower the cost of producing it; it is a major factor. Also you indicate that Acme would not be limited by any existing labor contracts, but it would be free to go out and recruit labor at whatever price it wanted to pay for labor on the open market and it would be my opinion under those circumstances we would be able to reduce the cost of labor at Acme considerably and therefore the runs would cost less and with cheaper labor we would be in an improved position.

968 Q. Now, assuming everything I just asked you were the same, and in addition you had a press comparable to press 2022—did you read the description of press 2022 in the Gorman deposition?

A. I did.

Q. Now, assuming all of the factors you have testified to recently were the same, and in addition to that you had a press comparable to press 2022 instead of the four presses you presently have at Acme, what then would be the financial picture as to profit and loss at Acme?

Mr. RAICHLE: I object to that in form and substance.

The COURT: Are you familiar with that, the operation, the production?

The WITNESS: I have read the description of it, I believe I understand it, sir.

By Mr. FELDMAN:

Q. Will you tell us what you know about that press?

Mr. RAICHLE: I assume he knows about the press, but what would be the financial picture then, what in the world would 969 that mean?

The COURT: He said the press, in his mind, has adaptability to reduce costs.

The WITNESS: That is correct.

The COURT: I will let you discuss it.

By Mr. FELDMAN:

Q. What is your answer?

A. As I understand it, we would have this press, the Sylacauga press, instead of our own present equipment?

Q. That is right, instead.

A. Then, our costs would drop still further. This is a much more efficient printing press than any we have, much more flexible.

Q. One other thing I would like you to clarify; I believe in talking or testifying before about sales expenses you stated that sales expenses would be fixed, is that correct, did you use the word fixed?

A. No, I don't believe so.

Q. Do you recall what you testified as to sales expenses at Sylacauga in relation to what your costs are at Acme?

970 A. They are approximately—may I see the exhibit again?

Q. Yes.

A. The combination of selling and travel expenses indicated on Projection 1 is \$45,000.00—may I go on?

Q. Go ahead.

A. My point was this. I made an assumption here that the printing work to be performed under Projection 2 would all be printing work that is now being performed at one or another of the printing plants, Dunkirk or Wilkes-Barre. I make this assumption. If this were not the case, there would be no need for the petition.

Mr. RAICHLE: I don't get that, what?

Mr. FELDMAN: The petition.

Mr. RAICHLE: What petition?

Mr. FELDMAN: Before the Court, a motion. That is a lay term for the motion you brought on.

The WITNESS: Motion, all right.

Mr. RAICHLE: He is an expert on law now.

Mr. FELDMAN: He never said he was an expert on law.

971 The COURT: All right. If we are going to get this witness on the road tonight, we are going to have to move along.

The WITNESS: In other words, the selling has been done on this work, these are sold now, and the selling expense then would be minimal until such time as some additional work beyond what is in vision by Projection 2 is sold.

Mr. FELDMAN: I have no further questions.

CROSS EXAMINATION

By Mr. RAICHLE:

Q. Did you read the Hornady deposition? You have been reading depositions, you say.

A. No, sir.

Q. Did you hear me read it?

A. I did.

Q. Did you hear how Hornaday and Southern Color Printing had taken away hundreds of thousands of fours?

A. I heard it, yes, sir.

Q. Since April of 1961?

A. Yes, sir.

Q. You say the selling has all been done, you assume
972 no selling is necessary. Do you still make that statement in the face of what you heard from the Hornady deposition?

A. With respect —

Q. Yes or no?

A. With respect —

Q. Yes or no, please?

A. I am sorry, I can't answer that question yes or no.

Q. All right. If you had a business, a printing business if you want to stick to that, and you had a series of jobs expiring and you had an aggressive competitor who was stating an avowed intention to get all of your business that he can, and had demonstrated that he could get a substantial portion of it, and couple that with the statement that he had bids outstanding at this very moment, wouldn't you feel it behooved you to make some selling efforts to offset his efforts? Yes or no?

A. I certainly would.

Q. That selling effort would involve expense, is that true?

A. Yes.

Q. Expense that you haven't allocated or allowed for here, is that true?

973 A. Yes, sir, that is true.

Q. So that if there is competition, if there is an invasion, if there is a taking away of business, selling expense is a real problem immediately to be incurred as part of the cost of the operation, is that true?

A. Not as I understand Projection No. 2.

Q. Forget about Projection No. 2 for a minute. If you have a business which is being assailed by competition, you are losing business; the sales expense to offset that effort on the part of the competition is real and immediate?

A. Yes, sir.

Q. Getting to this situation; you made no allowance for that cost or expense of operation which you, yourself, say is very real and immediate, is that true?

A. We are talking about two different circumstances.

Q. Why do you argue with me? What is your connection with this anyway?

A. I want to be understood.

Q. It isn't a question of telling the truth, you want to be understood?

A. I want to be understood.

Q. On behalf of the Government. Who first asked 974 you to come here anyway?

A. I was subpoenaed.

Q. You were subpoenaed?

A. Yes, sir.

Q. Have you got the subpoena?

A. I do have it, it isn't in Court.

Q. Where were you subpoenaed?

A. In my office in San Bernadino, California.

Q. In a civil case you were subpoenaed by Mr. Feldman to come into this district?

A. That is correct.

975 Q. Did you know you were going to be subpoenaed?

A. I did.

Q. Did you arrange to be subpoenaed?

A. I did not.

Q. When were you first contacted about this matter anyway? The matter of being a witness here?

A. Well, it has been within the past five or six weeks. The first contact was in late November.

Q. Just tell us what the contact was, if you will, please.

A. I received a telephone call.

Q. From whom?

A. From Mr. Feldman.

Q. Did he identify himself or did you know him?

A. He identified himself and I knew him.

Q. What did he say and what did you say?

A. He told me that he had a set of figures on which he had been asked by the Court to make some sort of a report and comment, and he wanted some help.

Q. Did he tell you whose figures they were?

A. No.

Q. Now, can you give us—fix that date?

A. I would say it was between the 10th and the 20th of November.

976 Q. Of this year?

A. Of this year.

Q. And what did you say?

A. I asked him to tell me some of the figures.

Q. And do you mean to say that he did not tell you whose figures they were?

A. I believe he did not on the first telephone call.

Q. But he related the figures to you over the telephone?

A. Some of them.

Q. Which ones?

A. I recall that we discussed the payroll figure and the re-pairs figure. I think that is all on the first telephone call.

Q. Did he tell you that it was a court in Buffalo that had made this request of him?

A. I don't believe he identified the court.

Q. What was the next communication you had from him, or contact you had with this matter—any kind or character?

A. Well, he telephoned me again. In that first conversation I asked him for some additional information. He telephoned me again and said he was sending it.

Q. What information did he ask for?

A. Well, I asked to know more about the operation, 977 the figures we were supposed to describe, more than what he had had at the time he first telephoned me.

Q. Didn't you ask him on the telephone?

A. I did, yes. He didn't know at that time.

Q. Said he didn't know? He didn't know whose operation it was, or where it was?

A. He didn't say that.

Q. Well, what was said on the second occasion?

A. He told me he was sending me the information we had discussed on the first telephone call, plus some additional, and that he probably would want me to prepare an affidavit of my comments on that information.

Q. This was on what day?

A. I couldn't fix the date exactly, sir. It was probably three or four days after the first telephone call.

Q. By that time you knew whose figures they were, didn't you?

A. In the second phone call, I believe, he identified them.

Q. And he told you about this case?

A. Yes, he explained to me what this hearing was generally about.

Q. You knew of Greater Buffalo Press, didn't you?

A. Yes.

978 Q. You knew of International Color Printing?

A. Yes, sir.

Q. You knew of the proposed Sylacauga operation, didn't you?

A. Not very much at that time.

Q. You had heard about the injunction, hadn't you?

A. Yes, sir.

Q. You are in certain areas at any rate a competitor of Southwestern Printing—Color Printing Company, aren't you?

A. Yes, sir.

Q. And you knew you were being asked to testify concerning a competitor's figures, didn't you?

A. Yes, sir.

Q. Did you welcome the opportunity?

A. I was frightened.

Q. By the Department of Justice?

A. No, by the idea of going on the witness stand.

Q. Are you still frightened?

A. A little.

Q. I see. Now then, ——didn't keep you off, though, did it?

A. No, sir.

979 Q. Now then, when the figures came or when the information came by mail—I take it—or did someone come out and visit you?

A. I was served by a Federal Marshal.

Q. No, but when you first got the figures, or some papers, in what form then did they come?

A. They came in the form of a copy of Exhibit 1, the Projections and the notes.

Q. Were the affidavits annexed to it, Mr. Hammond's affidavit and mine?

A. No. No, sir.

Q. And did they come with a covering letter?

A. Yes, sir.

Q. Have you got the covering letter?

A. I have it. I do not have it in court.

Q. Got it here in Buffalo?

A. Yes, sir.

Q. Would you bring it the next session then?

A. Yes, sir.

Q. Now, what were you told to do in the letter, or over the telephone, with respect to these figures?

A. To study them, to make any possible comparisons between those figures and our own experience, and to comment on them. I was asked specifically to determine whether I thought the figures were reasonable, whether the operation described was—would cost approximately what the figures said it would cost.

Q. And did you make a written report?

A. No, sir.

Q. Did you make an oral report?

A. I indicated some reaction on the telephone, but until arriving in Buffalo, I didn't make any real report in detail.

Q. Did Mr. Feldman tell you that he had tried to get an expert somewhere else to testify?

A. He did not.

Q. Did he tell you that Mr. Smith had gone over his figures, that is Mr. Smith of Southern Color Printing? And couldn't make a dent in them?

A. He did not.

Q. Did he tell you he had taken the matter up with Mr. Smith?

A. No, he did not.

Q. You knew Hornaday, didn't you?

A. No, sir.

Q. Did he tell you that he has shown these figures to Mr. Hornaday?

A. No, sir.

Q. Now then, have you ever been to Sylacauga?

Q. A. No, sir.

Q. Have you ever been to Alabama?

A. Yes, sir.

Q. Flew over it, I suppose?

A. I was at an airfield in Alabama once for twenty minutes or so.

Q. Mobile?

A. I can't recall the name of the town. It is a nuclear research place.

Q. Do you know where Sylacauga is?

A. No, sir, I do not.

Q. Well, you said it was ten miles from a newsprint mill something, didn't you?

A. I believe I said it was in the immediate area of a newsprint mill.

Q. Where is the newsprint mill, do you know?

A. Coosa River.

Q. Does the Coosa River run east and west or north and south?

A. I couldn't say.

Q. Is it in the western part of the state or the eastern part?

A. I do not know.

Q. Do you know where any of the cities of Alabama are?

A. I have a fair idea where Birmingham is.

982 Q. Where do you think that is?

A. It was something like three o'clock in the morning when I was there, fifteen or twenty minutes.

Q. What did you do, orient yourself by the moon or something?

A. I am not familiar with the geography of Alabama.

Q. You don't know anything about the state or any city in it, do you?

A. I would say that is generally true.

Q. Well, it is exactly true, isn't it?

A. Well, I have a little bit of knowledge about it.

Q. And yet you are talking about the saving and the transportation of newsprint from a mill in Coosa River located to you don't know where—located you don't know where to Sylacauga, another place you don't know where—right?

A. That is correct.

Q. Now, then, have you seen the affidavit as to what it is going to cost us to get newsprint down there?

A. No, sir.

Mr. RAICHLE: Do you have that affidavit?

Mr. FELDMAN: No.

983 Mr. RAICHLE: Mr. Feldman doesn't know what the newsprint is going to cost and you don't know.

The WITNESS: Right.

By Mr. RAICHLE:

Q. And the standard price is \$135.00 a ton, isn't it?

A. Or well, \$134.00, I think that there is some variation.

Q. And you were using \$132.00?

A. Yes.

Q. Do you get it for 132?

A. No, sir.

Q. Does Southern Color Printing get it for 132?

A. I don't know.

Q. Can you give me the name of any printer who does get it for 132?

A. No, sir.

Q. Now, when did you come here?

A. I arrived here Sunday morning at ten o'clock.

Q. Had you met Mr. Feldman before you came here?

A. Yes, sir.

Q. Where?

A. At Acme Color Print Company.

Q. When?

A. This would be a matter of three or four years ago.

984 Q. Oh, he has been out to see you, out there, is that right?

A. He was there.

Q. In connection with this case?

A. I do not know. I assume so.

985 Q. Well, you assumed so at the time. I don't want to spend a lot of time on this, but when Mr. Feldman called you to talk about the figures you knew it was the same old case he had been out to see you about before, isn't that true?

A. I felt sure it was.

Q. Yes. Now, when you got here in Buffalo who did you meet? Did you meet Mr. Smith?

A. No, sir.

Q. Did you meet Mr. —

A. I did meet Mr. Smith today in Court.

Q. But did you meet Mr. Feldman?

A. Yes, sir.

Q. And did you get up these exhibits, G-1 and 2, since you have been in Buffalo?

A. I did them over again since I have been in Buffalo.

Q. Oh, you did them over again. Where are the old ones?

A. Well, the old ones are in California.

Q. Are these more suited to your purpose?

A. I think they are a little clearer. The figures are the same, the arrangements are a little different.

Q. Did you and Mr. Feldman do these together?

A. No, sir.

986 Q. Where did you do these, in the hotel?

A. Yes, sir.

Q. Now then, you said you were a competitor of Southwestern Color Printing, the one at Lufkin, right?

A. Yes, sir.

Q. And certain of the areas you have out there are pretty much to yourself, don't you agree, geographically?

A. Lufkin is the nearest color printer to us.

Q. Well, certain of the areas which you do business in are areas that you have to yourself, due to your competitive geographic advantage, is that right?

A. We have felt that way previously, but we have doubts now.

Q. Is that because Southwestern Color took the Phoenix paper away from you?

A. That is a prime factor in our doubts.

Q. That was rather recently, wasn't it?

A. As a matter of fact, it does not become effective for another week.

Q. But you knew they underbid you?

A. We were told that.

Q. And your price was \$3.00 higher?

A. We don't know that.

987 Q. Don't you know that?

A. No.

Q. From what I understand, you say your cost of operation is lower in certain claimed instances, by you, lower in certain instances than the figures in Column 2, right?

A. In some cases, yes.

Q. In some cases they are higher?

A. Yes, sir.

Q. And in those cases that are higher, you don't have any quarrel, that is the way you expressed it, you said "I have no quarrel with the figures". When our figures are lower than yours in our column 2, then you don't quarrel, isn't that what you said in substance?

A. No, sir.

Q. Didn't you point to two specific items and say you had no quarrel because they were lower?

A. No, sir.

Didn't you say you had no quarrel with them?

I did.

Weren't they lower in both instances?

No, sir.

Will you point to those which you say you quarrel and those which you say you do not quarrel with?

A. I don't have them.

Q. Take these, if you will, please. Now, let me change subject for just a minute and I will get back to where we did you, and please listen to the question carefully, presented to our Exhibit A and made a part of Exhibit A indicating Column 1 and 2 were made?

With respect to the figures from Project 2, yes.

Well now, do yourself the justice of being right about do you mean that?

I used the actual figures from Projection 2 here on the

That isn't what I asked you.

I just copied them.

I asked you if you developed your figures as note one, integral part of Exhibit A, indicates that we developed ours?

No, sir, I did not.

Do you know what the result would be if you developed figures on the basis that note one states we developed ours? I think they would be wrong.

Q. No. I move to strike that out, that isn't responsive. I asked you, do you know what the resulting figures would be?

They would be the figures in Projection No. 2.

Yes. Now then, where we say in substance that a figure is based upon an experience at a Dunkirk plant or some other, you disregard that statement, don't you, in developing figures?

No, sir, I did not disregard it.

Well, you didn't accept it, is that right?

In some cases that is right.

Are you in a position to know what our experience is at Dunkirk?

No, sir, not beyond what it says in those notes.

Q. But assuming what is stated in the notes is true and correct, you have still disregarded the statement contained in the notes in various instances, isn't that true?

A. I took them into consideration.

Q. But you did not accept them even though you had no basis on which to challenge them, isn't that true?

A. I did not accept them.

Q. So as to whether or not we had the experience and the figures statedly predicate upon experience, whether they 990 were predicated on experience you don't know, have no way of telling and still won't accept, is that right?

A. Yes, that is right.

991 Q. Is that because we took the Phoenix business away from you?

A. No, sir.

Q. Is that because we are competitors of yours?

A. No.

Q. Is that because you want restraints placed upon us?

A. No, sir.

Q. Is that because you want it to be circumscribed as this other favorite competitor, Southern Color Printing?

A. No, sir.

Q. Now, let's take your figures. You know when you prepared the figures and when you gave your testimony that our income figure in each column was based on the average price charge in the instance of the five or six runs which we were under the Court's order allowed to transfer to Sylacauga if we opened the plant; you knew that, didn't you?

A. I knew it was in the notes, yes, sir.

Q. Well, but you could determine that that was so; you didn't have to take the word of a note, isn't that true?

A. No. What the prices are—

992 Q. That isn't what I asked you. The note says that the dollar sales volume for Projection No. 1 was secured by multiplying \$5.585 which is the average contract price per thousand four-page standards of group of newspaper which Dixie Color Printing Corporation is permitted to print at Sylacauga, Alabama, by the average production represented by these contracts. You read that, didn't you?

A. Yes.

Q. So you knew the price which was involved in the multiplication which resulted in the income figure?

A. I know the arithmetic is correct, yes, sir.

Q. And, therefore, you could prove the \$5.584 figure, isn't that right?

A. I did so.

Q. And having proved it, you still didn't accept it, is that right; in other words, you didn't trust yourself?

A. No, sir, that is not right.

Q. Now then, by what figure do you multiply your volume; what is your figure compared with our \$5.585?

A. I believe it is approximately \$1.27 higher. I don't have the figure here.

993 Q. All right. So it is roughly 20 to 22 per cent higher, right?

A. Approximately.

Q. So that when you are talking about a profitable operation by Acme, you are talking prices involved in the weekly fours on your volume 20 per cent higher than those involved in ours?

A. Approximately, that would be an average.

Q. Yes. So that on your seven million, whatever those were, you get a figure of 2,000,008, right?

A. Yes, sir.

Q. So you assumed a revenue of 2,000,008 on the same volume that our Projection No. 2 assumes at Sylacauga, that is the 3,434,000 fours a week which would result in \$2,289,613.00, right?

A. I don't understand you, sir.

Q. Well, I understand you, so we will start over. You are assuming on the right-hand column of G-1 an income to you of \$2,800,000.00, right?

A. That is the actual figure.

Q. But you have put down \$2,800,000.00 resulting from substantially the same volume that we have in our Projection 2 which brings us only \$2,289,613.00, right?

994 A. Yes, sir, that is right. This is the figure from your Projection.

Q. So that you have almost \$600,000.00 more in revenue from the same volume that we would be permitted to print under this order giving an effect to the particular runs involved, you have \$600,000.00 more revenue than we would have, right?

A. No, sir, I don't think that is right. I have \$600,000.00 more than the figure on Projection 2.

Q. Well, Projection No. 2 is multiplied, is it not, by the volume and the price just as your \$2,800,000?

A. I don't think it is the same, sir.

Q. Well, with his Honor's permission, I will demonstrate that it is.

The COURT: Let me talk to you about this generally for a few minutes. I take it, Mr. Raichle, that you are not anywhere near the end of this cross-examination?

Mr. RAICHLE: No, your Honor.

The COURT: I don't want to hurry you. I had hoped I could accommodate the gentlemen to send them back to California but I trust that you can make the necessary arrangements. I don't see any way that we can finish it up tonight.

The WITNESS: That is right, your Honor.

The COURT: I know that it has been a long day for me and I believe that we will renew at ten o'clock in the morning.

Mr. RAICHLE: Thank you, your Honor, I am sorry it is so long.

The COURT: I don't want to criticize anyone.

Mr. RAICHLE: Could I ask the witness to bring his profit and loss statement here and these other documents I have asked for in order to facilitate the cross-examination?

The WITNESS: I will bring you the documents that I have with me.

Mr. RAICHLE: You have got a P&L of your own that this \$2,800,000.00 figure results from?

The WITNESS: I don't believe I have it in Buffalo.

Mr. RAICHLE: Well, we will find out.

The COURT: Well, bring whatever you can.

996 The WITNESS: I will, sir.

The COURT: And bring it all tomorrow. We will recess until ten o'clock tomorrow morning.

(Thereupon, at 4:30 p.m. the proceedings were recessed until Wednesday, December 19, 1962 at ten o'clock a.m.)

[Caption Omitted in Printing]

Proceedings held before

996a Hon. JOHN O. HENDERSON, United States District Court
Judge, Western District of New York, on December 19th, 1962,
at Buffalo, New York.

Appearances: Elliott H. Feldman & John W. Poole, Jr.,
Esqs., Attorneys for the Plaintiff.

Raichle, Moore, Banning & Weiss, Esqs., By Frank G.
Raichle, Esq., and Ralph L. Halpern, Esq., Attorneys for
Greater Buffalo Press Incorporated.

Gallop, Climenko & Gould, Esqs., By Lester Miller, Esq.,
and
Lord, Day & Lord, Esqs., By Herbert Brownell, Esq.,
Attorneys for the Defendant, The Hearst Corporation.

997 (Proceedings December 19, 1962, commencing at
10:00 a.m.)

The COURT: Mr. Lynde, will you take the stand again?
PAUL LYNDE, having been previously duly sworn, re-
sumed and testified further as follows:

The COURT: Mr. Climenko had to go back?

Mr. MILLER: Yes, I am appearing for him.

The COURT: Yes.

CROSS EXAMINATION

(By Mr. RAICHLE (continued):

Q. Well, did you do some more work on this last night
after adjournment?

A. Some, sir.

Q. What did you do?

A. I had a brief conversation with Mr. Feldman in my
room.

Q. Well, did you work up any more figures?

A. No, sir.

Q. Did you correct any of those that you were talking
about yesterday?

998 A. No, sir.

Q. Did you find out any more about Alabama?

A. I saw the affidavit that was referred to yesterday.

Q. What affidavit? A. It was referred to in court yesterday. I hadn't seen it at that time. I saw it last night.

Q. You mean Mr. Feldman's affidavit?

A. I believe the affidavit is made by someone connected with the Coosa Plant, Newsprint.

Q. Did that mention \$32.00?

A. No, it didn't.

Q. Now, as a matter of fact, you don't know any more about Alabama today than you did yesterday? I have a reason for asking you that.

A. Only with respect to the newsprint mill.

Q. Now, then, you spoke of the power, the item of power is one of the costs?

A. Yes, sir.

Q. Do you know anything about whether this plant has to be air-conditioned in summer and heated in winter?

A. There was reference in the note attached to the projections as to air-conditioning and heating, yes, sir.

999 Q. Do you know what the temperatures are in Alabama?

A. No, sir.

Q. Did you notice it was two below zero on the 11th of December of this year?

A. No, sir.

Q. In all circumstances, the plant would certainly have to be heated in winter?

A. I would say so, yes, sir.

Q. And would have to be air-conditioned in summer, wouldn't it? Do you know the temperature gets as high as 105?

A. At those temperatures, it would have to be air-conditioned in summer, yes, sir.

Q. And have you made any inquiries as to the cost of power in Alabama?

A. No, sir.

Q. Do you know anything about the cost of power?

A. No, sir.

Q. Now, have you ever been to Wilkes-Barre?

A. No, sir.

Q. You have never seen the operation at Wilkes-Barre?

A. I have not.

Q. Have you seen the operation of Southern Color Print?

A. No, sir.

1000 Q. Have you ever been to that plant?

A. No, sir.

Q. Do you know where it is located?

A. Newberg, Newberg News, Virginia.

Q. What did you call it?

A. Newberg News.

Q. Newberg News?

A. That is what it is called.

Q. Isn't it Newport News?

A. I believe we are speaking of the same town. I am not sure.

Q. You have never been there?

A. No.

Q. You don't know anything about the cost of operation there, do you?

A. Very little.

Q. Well, do you know anything about it?

A. I have had some conversations with people who work there, who tell me their costs are high. I do not have any figures.

Q. Substantially higher than the cost in Project 2?

A. I don't know that comparison.

Q. You don't know anything about the cost of operation at Wilkes-Barre, do you?

1001 A. No, sir.

Q. Do you know anything about the cost of operation at Lufkin?

A. Only indirectly by reason of the fact they are able to underbid Acme Color Print.

Q. In some places, on some occasions?

A. Yes, sir.

Q. Do you know whether the cost of operation at Lufkin were higher or lower than those in Projection 2 with respect to the various items mentioned in the Projection?

A. I do not know.

Q. You are without information as to whether the costs are higher or lower with respect to the various items on Projection 2 in every other plant in the country, is that true; with the exception of your own?

A. That is true.

Q. Your plant is located where?

A. San Bernadino, California.

Q. It is owned by whom?

A. It is owned by a newspaper.

Q. What is the name of the newspaper?

A. The corporate name is Sun Company of San Bernardino.

Q. Is it part of the newspaper plant?

1002 A. They are separate plants.

Q. Close together?

A. About a mile apart.

Q. Now, I am going to invite your attention to a fact that appears right in the face of your exhibits here, G-1 and G-2. I want to have it very clear in everybody's mind, if I can, that neither of these exhibits make any reference to our Projection No. 1, do they?

A. I believe that is correct.

Q. You believe it; you know, don't you?

A. I would like to look, sir.

Q. Have you forgotten whether they do or not?

(Document shown to witness.)

The WITNESS: I believe that is correct.

1008 Q. Well, you know it now, after examining it?

A. It is correct.

Q. So that your testimony so far as these exhibits are concerned related solely to our projection No. 2?

A. I believe I made some reference to No. 1 in my testimony, not on the exhibits, though.

Q. All right. And you of course looked over our projection No. 1, didn't you?

A. I did, sir.

Q. You were requested to?

A. Yes sir.

Q. Just as you looked over Projection No. 2?

A. I looked over No. 2 somewhat more carefully than No. 1.

Q. You were asked to look at No. 1, weren't you?

A. Yes, sir.

Q. And reach conclusions concerning it, weren't you?

A. Yes, sir.

Q. And you were asked to look over No. 2 and reach conclusions concerning it, isn't that so?

A. That is so.

Q. And you proceeded to look at both of them?

A. Yes, sir.

Q. And you decided to testify concerning Projection
1004 No. 2, isn't that so?

A. Yes, sir.

Q. And make up exhibits pertaining to Projection No. 2?

A. I didn't realize I was making up exhibits. I didn't realize those things were going to be put in evidence.

Q. Would you have been more careful if you had?

A. I think I would have been more neat.

Q. Would you have been more careful about the figures?

A. I could have been more careful.

Q. Won't you answer a question direct?

A. Yes, sir.

Q. If you had known the exhibits were going to be put in evidence and you were going to swear to them, would you have been more careful about them?

A. No, sir.

Q. Now, at page 345 of yesterday's transcript you were asked this question, and I am refreshing your recollection: "Assuming, Mr. Lynde, that Acme were restricted to a volume projection of 3,434,000 fours per week and you received an income based upon your present charges and all the other operating factors remaining the same at Acme, would Acme 1005 operate at a financial loss?" Do you remember being asked that question?

A. Yes, sir.

Q. And you said on page 346: "I think under those conditions that Acme would be at the break even point." Do you remember making that answer?

A. Yes, sir.

Q. And your charges, used the word contained in the question and referred to in the answer, are how much higher than the \$5.58 assumed in the Projection No. 2?

A. We are speaking now of the average?

Q. Yes.

A. I believe \$1.27 and a fraction of cents per thousand fours.

Q. All right. Then it would be comparatively simple to figure, compute, if you please, the loss which Acme would sustain on the basis of the charges assumed in the projection on the volume of 3,434,000, isn't that so?

A. I would have to have more information.

Q. If you were at the breaking point on your own charge, if you charged \$1.26 less per thousand fours, it would be matter of computation and multiplication, wouldn't it?

A. Provided all other factors remain the same, yes, 1006 sir.

Q. All right. And have you made that computation?
A. No, sir.

Q. Do you have any idea how much more you would have lost than we project in the way of a loss on that basis?

A. It would be something over \$3,000.00 a week.

Q. Well, wouldn't it be \$252,000.00 or thereabouts?

A. I haven't made the calculation, I don't know.

Q. I mean, on an annual basis.

A. I don't know the answer.

Q. Well, it would be substantially more than we projected isn't that true?

A. We are talking about three million a week and one dollar and a quarter a thousand.

Q. Yes.

A. That is approximately \$3,250.00 a week loss or around \$155,000.00 a year. I don't have my calculating machine here.

Q. Oh, you calculate with a machine, do you?

A. Yes.

Q. Have you ever tried doing it the conventional way?

A. Not for some years.

Q. Even simple addition?

A. Very seldom.

1007 Q. Multiplication?

A. Very seldom.

Q. Now, are these, all these figures machine made figures in your exhibits here, G-1 and 2?

A. Yes, sir, I am reasonably sure they are.

Q. I see. Now, tell me, do you feel you could do better with our press than we do, this press you have never seen?

A. This is the press at Sylacauga?

Q. Yes.

A. I believe that press, from what I know of its description, capability, is considerably—

Q. Please listen to my question. Do you claim that you, Acme, could do better with our press than we do?

A. I don't know how well you do with that press, sir.

Q. Oh, you don't know how well we can do with it, do you?

A. My position is—

Q. You don't know how well we could do with it, do you?

A. No, sir.

Q. You don't know how efficiently or inefficiently it could be operated, do you?

1008 A. Only in comparison with ours, that is all.

Q. Do you claim to know that?

A. If my understanding of the press is correct, yes, sir.

Q. Now, do you say you could operate the press more efficiently than we do?

A. No, sir.

The COURT: I wonder if I could ask a question?

Mr. RAICHLE: Certainly, Your Honor.

The COURT: Now, your costs, you say, are substantially less at Acme than this projected cost at Sylacauga and yet your return is a dollar plus, a thousand, more than at Sylacauga. Give me a short answer as to why the differential on the west coast?

The WITNESS: First of all, sir, our costs are less only in certain categories.

The COURT: No, the overall cost substantially. We know that you have told us the vast difference in your overall cost.

The WITNESS: No, sir, our overall costs are higher.

The COURT: Well, what area is that? I don't recall 1009 the particular area. Where is your added expense?

The WITNESS: Payroll and newsprint. In most other areas we were lower in the projection, but payroll and newsprint we were higher.

Mr. RAICHLE: Those are the two major items.

The WITNESS: Yes, sir.

The COURT: One of the things you talked about yesterday was an assumption they could buy the newsprint and I as an outsider at the initial hearing thought the same thing, that they might have an advantage in buying newsprint nine miles away over buying it from British Columbia. I find it is not so, that the cost is the same for newsprint. Do you now believe that?

The WITNESS: No, sir, I still think it would be an advantage, even though the price of newsprint is the same.

The COURT: Well, the price is the delivered price, as I understand it.

1010 The WITNESS: Yes, sir, but I would like to explain it.
The COURT: Go ahead.

The WITNESS: I agree, the price of newsprint at the printer's plant would be pretty much the same all over the country, but when he takes delivery at the mill rather than at the plant, then there can be negotiated what is called a freight allowance and this tends to reduce the printer's delivered cost, because he is performing the delivery.

The COURT: Well, is there some other printing outfit that is close to a supply like this Alabama supply, that you could compare? Have you had that experience?

The WITNESS: I could point to this affidavit from Coosa Pines, which refers to an allowance made to Birmingham.

The COURT: You do have a similar situation?

The WITNESS: Yes, sir, the same mill.

The COURT: All right. Well, you go ahead. I just wanted to know whether the overall costs were larger than the
1011 Sylacauga costs.

Mr. RAICHLE: That is what I am trying to demonstrate. After all, this is all addressed to Your Honor. We would welcome questions that would clarify it in your mind.

The COURT: All right, go ahead.

Mr. RAICHLE: And Your Honor has in mind the costs he is talking about are the costs on our Projection No. 2, which relates to the \$7,000,000.00 operation that he hasn't challenged.

The COURT: I understand.

By Mr. RAICHLE:

Q. Now, while you are on the subject of newsprint, do you know what we can get newsprint for, costs at our plant down there at Sylacauga?

A. No, sir.

1012 Q. We'll get back to the newsprint, but before I do that I want to get at something else.

The COURT: Could I ask just one more question?

Mr. RAICHLE: Certainly.

The COURT: I hate to interrupt you. What is your competition on the West Coast other than that plant in Texas?

The WITNESS: Wilkes-Barre is printing some runs. I think particularly of the West Tacoma, Washington News Tribune.

The COURT: That means that Wilkes-Barre has to ship the finished product all the way out there, is that right?

The WITNESS: That is my understanding.

The COURT: You are on the West Coast, to the customer—

The WITNESS: We are approximately one-third the distance away, I'd say.

The COURT: Isn't it a fact you are able to charge the price you do, a dollar-plus, more than the projection at Sylacauga because you are in a singularly non-competitive market 1013 out there, except for Texas and Wilkes-Barre which doesn't impress me very much.

The WITNESS: It is true that with those exceptions, we have no other printers in competition with us.

The COURT: There is a difference, isn't there, between the proposed plant at Sylacauga and the Southern Color Print—that is hot competition, as you view it, isn't it?

The WITNESS: Yes, sir.

The COURT: All right.

By Mr. RAICHLER:

Q. Well, before the Lufkin Plant was opened you had no competition in your area, isn't that true?

A. No, sir, that is not true.

Q. Who was your competition?

A. In terms of other printers we competed at that time with both Greater Buffalo and Wilkes-Barre, in some areas.

Q. But there no plant within striking distance of you? 1014 I use the words that I learned from counsel representing the eminent and the respected Mr. Hornady: You had the competitive advantage, didn't you, of location?

A. Generally speaking, yes. There are one or two exceptions, but generally speaking, yes.

Q. Now on the subject of labor rates, what are your labor rates currently?

A. A journeyman's scale in the press room on the day shift is \$3.60 today.

Q. You mean an hour?

A. An hour.

Q. What does the man in charge get?

A. I believe it is \$3.84.

Q. That is per hour?

A. That is per hour.

Q. Now then, he has vacations and paid holidays and all that sort of thing?

A. Yes, sir.

Q. And then don't you know that your labor rates, as just given, are higher than those which we project in Sylacauga?

A. Yes, sir, I am aware of that. No, I will have to change that answer. I don't know what hourly scale you project in Sylacauga.

1015 Q. Now, what hourly scale do you project in Sylacauga in reaching your figures on your exhibits with respect to payroll costs?

A. I did not project an hourly scale for Sylacauga.

Q. Well, what labor rates did you use?

A. Well, if you want me to explain how I arrive—

Q. No, I want you to tell me what labor rates you used.

A. I used the labor costs at Acme and compared them with the labor costs shown in Projection No. 2, and also took other factors in consideration.

Q. And the labor costs at Acme were greatly in excess of those in Projection No. 2?

A. That is correct, sir.

Q. So that, in our projection we were so conservative that we projected labor costs substantially less than your own, isn't that true?

A. Oh, yes, sir, that is true.

Q. So you proceeded to reduce, in your testimony, our labor rates which were already substantially less than yours? Right?

A. That is correct.

Q. How long have you been in this business?

A. Ten years.

Q. Who is your boss?

1016 A. James Richter.

Q. Did you check any of these figures with Mr. Richter?

A. We had some discussions on some of the points that I testified to.

Q. Does Mr. Richter know—I think you told me you did this on a Sunday afternoon here in Buffalo, you made up this stuff?

A. I copied the figures on Sunday.

Q. What, from something Mr. Feldman had?

A. Oh, no, sir, from my own notes.

Q. That was on Sunday afternoon, right?

A. Yes.

Q. Does Mr. Richter know that on a Sunday afternoon in Buffalo you accomplished what you haven't been able to accom-

plish in ten years at your own plant—a reduction of your labor costs by about one-half?

A. I don't understand, sir. I am sorry.

Q. Well, I am the one who doesn't understand. You, in making up your figures, you have used labor rates that are about one-half yours, isn't that true?

A. Yes, that is correct, with respect to Sylacauga I have used labor costs.

1017 Q. So for ten years, you have been trying to keep control of your labor costs, haven't you?

A. Yes, sir.

Q. And one Sunday afternoon, you project one-half of the costs which reflects the best of your efforts and control in ten years? Is that right?

A. No, sir, I wasn't projecting a cost for Acme Color Print Company.

Q. No, you were projecting a cost for testimony here in court against a competitor, isn't that right?

A. That is not right.

Q. What part of it is wrong? You point out anything in that question that was wrong.

A. I believe my efforts were objective, completely so.

Q. That suggests that you had an object.

A. Yes, sir.

Q. And the object was to come here and testify, isn't that right?

A. Yes, sir.

Q. Against a competitor?

A. To testify to what I believe is the truth.

Q. Are you being paid for your testimony?

1018 A. No, sir. Well, in this sense, my salary is continuing from my employer.

Q. What is your salary?

A. My salary at the present time is \$13,000 a year.

Q. And what are your duties? What do you do?

A. Well, I have responsibility for the full operation subject to—I report only to the corporate president.

Q. Did you bring your profit and loss statement?

A. I did not, sir. I brought my case with all of the papers that I brought with me from the West Coast. I do not have a profit and loss statement.

Q. Well, your company gets up a profit and loss statement every year, don't they?

A. Yes, sir, every month.

Q. What?

A. Every month.

Q. Every what?

A. Every month.

Q. And do you mean to say that coming here to testify as to costs of operation and results of operation and to make comparisons with Acme's operations, you didn't bring a profit and loss statement?

A. No, sir, the figures are all on the exhibit.

1019 Q. What do you mean, "the figures"?

A. But I did not bring the statement itself. I copied the figures on an exhibit.

Q. Then you say that this right-hand column here is 1020 your exhibit?

A. The column labeled 'Acme Color Print' contains actual figures from our records.

Q. It says Acme—1962?

A. That is correct.

Q. Do you say that is your profit and loss statement?

A. No, sir. Those are operating figures. They are figures which appear on the profit and loss statement.

Q. They are part of the figures that appear?

A. That is correct.

Q. There are other charges against the operation than those shown here?

A. Other charges on the corporate statement, not part of the printing operation.

Q. The two major items, payroll and newsprint, on the operating statement of Acme are higher cost items than those projected on our projection, is that true?

A. That is true.

Q. Yet you have the hardihood to come here and challenge our projection in the face of the fact that your own operating statement has higher figures for the same cost items, 1021 right?

A. I don't believe they are the same cost items.

Q. The same category?

A. The same category, yes, sir.

Q. All right, now getting back to the newsprint. Have you computed the newsprint cost to us at Sylacauga as comprehended by our Projection 2 even on your assumption that it could be purchased for \$132.00?

A. I did, yes, sir.

Q. Where is the working papers that was worked out on?

A. It may be in my bag. I didn't bring it to the stand. It is outside the rail by my coat.

(Thereupon, briefcase referred to was delivered to the witness.)

By Mr. RAICHLE:

Q. Have you got it?

A. I believe so.

Q. May I see it, please?

(Document shown to Mr. Raichle.)

The WITNESS: I believe the computations here—there is the four ten million per year; 47½ lbs. per thousand; consumption rate 9700 tons per year.

Mr. RAICHLE: I would like to have this marked for identification.

The COURT: We will mark it as soon as Mr. Ciccarelli comes back.

Mr. RAICHLE: All right.

By Mr. RAICHLE:

Q. What else do you have in the bag there?

The COURT: We will mark that now, Mr. Raichle. Do you want to hand that up? Mr. Ciccarelli will mark it as an exhibit for identification. You have no objection? Do you want that in evidence, Mr. Raichle?

Mr. RAICHLE: No, just marked for identification.

The COURT: All right.

(Thereupon, Document referred to was marked Defendants' Exhibit D-1 for Identification.)

1023 By Mr. RAICHLE:

Q. Now, are these all your working papers here?

A. Everything I have with me from the West Coast, yes, sir. No—I do have some comic sections here. Would you like those?

Q. Yes, what are those?

A. These are copies of newspaper comic supplements.

Q. Printed by Acme?

A. No, sir.

Q. By whom?

A. I don't actually know.

Q. What is this thing here, this paper here?

A. This is material given to me by Mr. Feldman. Perhaps there is a letter to identify it.

Q. This one here, where it says "Determination of Pressmen's Rates for 1962", what is that paper?

A. I don't know what plant that refers to, sir, unless it says in his letter. It doesn't say there.

Q. What letter are you referring to?

A. I think the letter is attached.

Q. I see he sent you copies of our collective bargaining agreements with the union?

A. I believe the paper you are asking me about is an excerpt from one of those. I am not sure.

Q. Those are not—

1024 A. Those are not my figures, no, sir. It was something that was sent to me by Mr. Feldman.

Q. You found that you paid journeymen the same as we did?

A. I wasn't able to tell exactly.

Q. Within a penny or two?

A. I believe your per-hour rate is slightly higher than ours—at International, as I recall it. They are very comparable.

Q. You got the rate scale at Dunkirk from Mr. Feldman and copies of the contracts with the union that we have, right?

A. He sent me all of that information there. Not that piece of paper.

Q. What is that?

A. That refers to the cost of power at our plant in California.

Q. Out there where the weather is good, right?

A. Yes, sir.

Q. Now, Mr. Feldman, in his letter of November 15, 1962, is describing this press. Is that the source of your information as to the press at Sylacauga?

A. Originally that was the source. I had to get additional information.

1025 Q. What additional information did you get?

A. After I arrived in Buffalo and asked him some questions about the press—that explanation in the letter wasn't sufficient—he let me read from—I think it was Mr. Gorman's deposition which contained Mr. Gorman's description of the press.

Q. And you told me yesterday you didn't change any figures after you came to Buffalo?

A. That is correct, I did not.

Q. And at the time you made up the figures you didn't have a sufficient description of the press, you say?

A. That is true.

Q. All right. You didn't know the capacity of the press?

A. The specific point on which I was not clear was the number of cylinders or printing couples.

Q. What is the significance of the cylinders; it is directly related to the capacity of the press, isn't it?

A. That is correct.

Q. So without knowing anything about the capacity of the press, you made up the figures which you brought here and copied on Sunday, right?

A. No, sir.

1026 Q. Well, you told us you didn't change any figures, you simply copied them when you got here, didn't you?

A. I found that the figures I had made up on the basis of the incomplete information were acceptable when I had the complete information. I did not change them.

1027 Q. Acceptable to whom?

A. To me.

Q. All right. I notice you don't use the word "correct" when describing your figures?

A. I did not.

Q. Now, I notice in the correspondence from Mr. Feldman which you showed me there, that he didn't make any request that you concern yourself with Projection No. 1. Did you notice that in his letters?

A. I didn't notice it, no, sir.

Mr. RAICHLER: I am almost through, Your Honor.

By Mr. RAICHLER:

Q. The matter of repairs are simply a question of how much you want to keep up your machinery, isn't that true?

A. I don't believe I could accept that, no, sir.

Q. You wouldn't be stubborn, would you?

A. I hope not, sir.

Q. The better the machinery, the better the job, isn't that so?

A. Generally speaking, I would say yes.

Q. And you have had complaints about yours, haven't you?

1028 A. You are speaking now of our machinery?

Q. Of your job.

A. Oh, yes, indeed, sir.

Q. In fact, you have had a number of complaints and they have been growing in numbers, isn't that so?

A. I am not aware of any increase.

Q. Just the time honored high volume of complaints, right?

A. I would say the rate is perhaps slightly lower than it has been in the past.

Q. Now would you answer this question yes or no; has it ever occurred to you that those complaints could be reduced in number if you spent a little more money in repairing your machinery, yes or no, please, has that occurred to you?

A. I think it has occurred to me, yes, sir.

Q. But you haven't made the expenditures, have you, additional expenditures?

A. Yes, sir, I would say we have.

Q. I see. So that the matter of repairs of machinery fluctuates year by year, is that right?

A. It would vary, yes.

Q. And it depends on the age of the machinery, it depends on the hours of use to which it is put, doesn't it?

1029 A. Oh, yes.

Q. It depends upon a host of factors which is unnecessary to itemize one by one here in the course of your examination?

A. There are many factors.

Q. Now, you have seen none of the machinery involved in the Sylacauga operation, have you?

A. I have seen none of it.

Q. And you haven't seen the machinery at Wilkes-Barre or Newburgh News, as you call it, or at Lufkin.

A. That is correct.

The COURT: Let me ask you, are you technically equipped to know these things, these printing plants. Are you in any manner an engineer?

The WITNESS: No, sir, I am not an engineer.

The COURT: I mean, do you recognize the problems? I take it that the press at Sylacauga is much more complicated than yours.

The WITNESS: It is different in this sense.

The COURT: Do you know it technically, do you know what was wrong with it?

The WITNESS: Yes, sir.

1030 The COURT: In other words, if it broke down you would know why it broke down yourself?

The WITNESS: I couldn't say that, sir.

The COURT: If it wasn't turning out a good product you would know why it wasn't turning out a good product, is that right?

The WITNESS: Perhaps, it depends. In many cases, yes and some cases, no.

The COURT: Well, it is a more complex machine than your press. You told us yesterday you had a little press with different kinds of plates and you made the differential in your press rather than at Sylacauga, you had a large circulation, is that right?

The WITNESS: Large circulation, that is the big factor, yes. I don't believe the difference is in the machinery as a matter of complexity, it is the difference in speed.

The COURT: The only thing I want to know is do you personally know the problems of this Sylacauga press?

The WITNESS: If I understand the description of Mr. Gorman's definition, I believe I do.

1031 By Mr. RAICHLE:

Q. Did you ever see a press exactly like it?

A. No, sir.

Q. Much less, did you ever try to operate one?

A. No, sir, I am not a pressman.

Q. Did you ever see anybody else operate one like it?

A. Yes, in the sense that the presses are the same type of equipment. I have never seen anyone operate a five-plate wide machine.

Q. And you don't know the problems introduced by the additional plates, do you?

A. I believe I understand them.

Q. You believe you do.

Mr. RAICHLE: I would just like to ask my colleagues something.

By Mr. RAICHLE:

Q. All right, let's get back to your newsprint now. You arbitrarily took a figure or assumed a figure of \$132.00 a ton, al-

though you don't know anybody who gets it for that, which you said. Now, that is the price you took, right?

A. I assumed that the net costs at the printer's plant 1032 of \$132.00 a ton on the basis of his picking up the paper at the mill.

Q. Do you know how much it cost him to pick it up?

A. I do not, no.

Q. It costs something, doesn't it?

A. Oh, yes.

Q. And how much less than the freight rate you don't know, do you?

A. Well, I assume \$3.00 there. I assumed his net saving would be \$3.00 a ton.

Q. All right. But you don't know anybody who has effected such a savings anywhere in the industry, do you; yes or no?

A. I can't answer that yes or no.

Q. You are under oath and I ask you the question, do you know?

A. If I read an affidavit, does that constitute knowledge?

Q. I am going to ask my question in my own way.

Mr. FELDMAN: I object at this time, if the witness can't answer yes or no.

Mr. RAICHLE: He knows whether he does or not. Just because it is an adverse question he does not have to be molly-coddled.

The COURT: You have a source of information which 1033 is the affidavit form and that is a source of your knowledge; you can answer it.

The WITNESS: Thank you, sir. Yes, I do know.

By Mr. RAICHLE:

Q. Someone who is actually receiving it?

A. Yes, sir.

Q. All right. Where is the affidavit? Are you referring to this affidavit of Mr. Richard J. Appert, which Mr. Feldman has just handed to me, dated the 11th day of December, 1962?

A. May I see it? Yes, sir, this is the affidavit I referred to.

By Mr. RAICHLE:

1034 Q. When did you first see it?

A. Last night.

Q. When did you first know of its existence?

A. Yesterday in court.

Q. But you made your assumption on the basis of the affidavit before you even knew of its existence, is that right?

A. No, sir.

Q. Well, you made it when you made these figures up which you brought here, isn't that true, which you copied on Sunday?

A. Yes, sir.

Q. Where on the affidavit is the figure \$132.00? Point to it, please.

A. It is not mentioned.

Q. No, it is clear from this affidavit that there is an abundance of newsprint, isn't it?

A. Oh, yes.

Q. All right, now I read to you from page 3. "The newsprint produced at the division's mill is now generally quoted for sale at a price of \$135.00 per ton with full freight, but not exceeding the lowest carload rate allowed to destination." Do you see that?

1035 A. Yes, sir.

Q. That doesn't say 132, does it?

A. No, sir.

Q. Do you know anything about the cost of trucking newsprint?

A. In California, yes, sir.

Q. You don't know anything about the cost of trucking it down here in the vicinity of this river—the same river which yesterday you said you didn't know whether it ran north, south, east, west or where it was?

A. I do not know the truck rates in Alabama.

Q. So that, in addition, if there is to be a saving over \$135.00, it is an assumed amount by you, isn't it?

A. That is correct.

Q. And to make a correct assumption on that subject wouldn't you have to know something about the situations prevailing in Alabama?

A. Well, in order to be exact, yes.

Q. And you don't know yourself whether there is any such saving possible, do you?

A. Only my opinions.

Q. Only your opinion, and is your opinion based on this affidavit?

1036 A. No, sir.

Q. There is nothing in that affidavit upon which you could base such an opinion, is there?

A. I believe there is, sir.

Q. Point to it.

A. May I read it?

Q. Thought you had read it.

A. Paragraph 3—I am sorry, it is paragraph 4, is the one I am referring to.

Q. All right, read it.

A. "There are instances with respect to customers located near the division's mill where such customers take delivery of newsprint at the mill door and, in connection therewith, are allowed freight at the rail carload rate to the customer's location. Examples of such pick-up allowances are \$3.70 per ton for customer transported shipments to Birmingham, Alabama and", \$590.00 per ton, I am sorry, "\$5.90 per ton for customer transported shipments to Atlanta, Georgia."

Q. All right, the customer who picks it up that way has to find some other means of getting it to the plant. Isn't that so?

A. Yes, sir.

Q. And so far as you know, the truckers are not 1037 free down there, are they?

A. I don't know, sir.

Q. Well, you are under oath, you know it would be costly.

A. There certainly would be some expense involved, yes, sir.

Q. And how much you don't know?

A. No, sir, I do not.

Q. And have you seen any rates?

A. No, sir.

Q. Have you sought to find out what the rates are down there for such trucking?

A. No, sir.

Q. Well, now we'll get back to this newsprint thing in a little different way. What do we project for this newsprint? Have you got it there?

A. I did not calculate your per ton cost. I could not.

Q. No, you couldn't. Would you be surprised to know that our per ton cost figured in our projection is less than what you are talking about on the basis of \$132.00?

A. I would, sir.

Q. You would?

A. I would be surprised.

1038 Q. Would you have any answer for it, if I demonstrate that to you?

A. Then it must be that the consumption rate in pounds per thousand also is less than the one I used. I am sorry, consumption rate would have to higher.

The COURT: You mean less loss or waste?

The WITNESS: I mean they would use more pounds of newsprint up than I thought they would, in order to produce a given number of pounds.

By Mr. RAICHLE:

Q. If our projection involved a newsprint cost less than yours, you would have no answer for it at all, would you?

A. Only what I just said.

Q. Now, that \$3.70 referred to in the affidavit and I suppose for completeness we better mark the affidavit for identification—

(Whereupon, affidavit was marked Defendants' Exhibit D-2 for Identification.)

1039 By Mr. RAICHLE:

Q. The \$3.70 per ton relates to the railroad rate from the mill to Birmingham, right?

A. That is my understanding, yes, sir.

Q. And the \$5.90 represents the freight rate from the mill to Atlanta, Georgia, right?

A. Well, it has some relation to the freight rates.

Q. Well, you say in the one instance it reflects the freight rate and in the other instance you say it has some relation. It is the same thing in both cases, isn't it?

A. I don't believe I could say that it is the freight rate on the basis of this. It has some relation to the freight rates.

Q. Well, is it more or less than the freight rate?

A. It is not possible to tell that.

Q. Do you know whether the trucking down there under the conditions prevailing is more costly than rail shipment or not? I am asking you, if you know?

A. I do not know.

Q. Have you sought to find out?

A. No, sir.

Q. I have just one thing and then I will be through.

Now, if you will just do one computation on this
1040 newsprint for me—

Mr. RAICHLE: We are making a computation, I am going to ask the witness to check it.

By Mr. RAICHLE:

Q. Now, Mr. Witness, if you will please be good enough, do you have a pencil?

A. I have a pen, sir.

Q. Well, something to write with, legible to you and convenient for your use; would you take your \$132.00 assumed figure, which nobody gets, as the price per ton and divide that by 2000?

A. I have done that, sir.

Q. And what did you get?

A. 6.2 cents.

1041 Q. Would you do it again, please? Don't you get 6.60?

A. You are correct, sir, six and two-thirds cents.

Q. Is that because you are so used to doing these things by machine that you made these mistakes?

A. I hope so.

Q. That represents what, that 6.60?

A. That is the cost per pound.

Q. Now, you said there was $47\frac{1}{2}$ pounds to make up a thousand fours?

A. Yes, sir.

Q. Will you multiply that 6.60 by $47\frac{1}{2}$?

A. I get \$3.13 $\frac{1}{2}$.

Q. Well, all right. Now then, you get thirteen what?

A. \$3.13 $\frac{1}{2}$.

Q. All right. Now, that represents what?

A. That is the cost per thousand fours.

Q. And that is what you think it should be, isn't it?

A. Approximately, yes, sir.

Q. Exactly; I am using your formula, $47\frac{1}{2}$ pounds.

A. That is my best estimate.

Q. All right. Now then, will you make another computation? Will you put down \$5.585 and take 56 percent of that?

A. Do you want the answer?

1042 Q. Yes, please.

A. Three dollars, twelve and three-quarters cents.

Q. Let me invite your attention to something. On our Projection No. 2, the one which you intimated you criti-

eize as to the cost of newsprint, do you notice we take the figure 56 percent?

A. I see that figure, yes, sir.

Q. You saw it before, didn't you?

A. Yes.

Q. You, at all times, have been familiar with the fact we allocated to newsprint in the projection, which we are discussing, 56 percent, right?

A. Yes, sir.

Q. Now then, you claimed yesterday that our newsprint item was too high, didn't you?

A. That is my best judgment, yes, sir.

Q. Now, right here in the presence of His Honor, you have figured out that on the basis of your own formula, 47½ pounds per thousand fours, at the \$132.00 price that you are talking about, works out to a little more than 56 percent, being the difference between the \$3.12 on our part and \$3.13 on yours, is that so?

A. It is about a quarter of a cent difference.

1043 Q. Otherwise, my statement just made is correct?

A. Yes.

Q. Therefore, our newsprint projection is substantially the same and even a little less than the cost resulting from the operation of the formula which you say is the proper one and which you use, is that true?

A. No, sir.

Q. Well, where is that machine of yours?

A. May I explain?

Q. Where is this machine, is it in town?

A. It is in California.

Mr. RAICHLE: We can't get any help from that. That is all then.

REDIRECT EXAMINATION

By Mr. FELDMAN:

Q. You just answered no to the last question. Will you explain why?

A. Well, the revenue figure, which I also judged to be unmeaningful, was used in the last computation.

Q. Did you find objection to the revenue—

Mr. RAICHLE: The revenue figure, do you mean the \$5.00?

Mr. FELDMAN: He is talking about the total revenue of the projection.

1044 The WITNESS: I mean the \$5.00.

Mr. RAICHLE: You fellows are not together.

Mr. FELDMAN: Will you repeat the last question and answer?

(Thereupon the last question and answer were read by the reporter.)

1045 By Mr. FELDMAN:

Q. When you referred to the revenue figures, Mr. Lynde, I now show you Exhibit A, what were you referring to?

A. It is the average revenue per thousand fours of \$5.58 $\frac{1}{2}$ cents.

Q. How is that derived, sir?

A. That appears in the notes attached to Projections 1 and 2.

Q. I know, but it tells you certain figures from where that was derived from?

A. Yes, sir.

Q. What were the two figures which formed the basis to give you that \$5.00?

A. It is an average of a group of other runs not identified by name, but they are identified as the runs making up the Projection No. 1, the production under Projection No. 1 and that same average is applied to the additional runs to be produced under Projection No. 2.

Q. Am I correct then, in stating that yesterday your testimony was that you found objection to using the same average in regard to Projection No. 2, is that correct?

A. That is correct.

1046 Q. Now, will you please state the reasons here now?

A. Well, the reason is this; the process of making projections or statements is at best an approximation, no matter who is doing it. We are dealing in exact, therefore it is a matter of basic procedure in doing this to make the best possible use of any information made available to you in order to minimize the error. This is standard procedure. I don't feel in this case maximum use was made of the best available information, because an average of some other printing jobs is what it is, rather than these specific jobs involved, that was used in Projection No. 2.

Q. Now, you have before you certain supplements, is that correct, Mr. Lynde?

A. Yes, sir.

Q. Now, you repeat again where you got those supplements?

A. I received these from you.

Q. Was that pursuant to your request?

A. Yes.

Q. What exactly did you ask me?

A. I asked you if you could identify for me and get me some description of the additional printing runs which would be transferred to Sylcauga and would make up the additional production described under Projection 2.

1047 Q. Now, pursuant to that request I sent you those supplements that you have before you?

A. Yes, sir.

Q. Now, in looking, picking up one of the supplements before you, take the first ones, I ask that in holding one of the supplements before you, Mr. Lynde, what use can you make of that supplement in regard to the projection, or Projection No. 2?

A. I did not make use of these supplements.

Q. But if you had such a supplement before you and knew that that constituted part of the Projection No. 2, what use could you make of that supplement?

Mr. RAICHLE: Wait a minute, it does not constitute a part of Projection No. 2, that is the point.

Mr. FELDMAN: I am asking him to assume that.

Mr. RAICHLE: He is assuming something contrary to the fact.

The COURT: I will overrule the objection. You do have such knowledge?

The WITNESS: Yes, sir. There are some items of information—several items of information about the runs here 1048 which would be helpful to anyone trying to project the cost of producing them. The circulation is probably the most useful thing; the size, the number of copies to be printed for each newspaper.

By Mr. FELDMAN:

Q. Excuse me. Now, knowing the name of the particular newspapers, are you able to find out the circulation?

A. Approximately.

Q. Where would you get such information?

A. There are trade journals which give this information.

Q. All right. Now, the next item.

A. The number of pages to be printed in this section, whether in this case 10, 12, 16, 18, whatever it is.

Q. What bearing would that have, if any?

A. Well, the use of the press, the efficiency of the press in printing the run would vary according to the number of pages being printed.

1049 Q. Now, the fact that there are smaller pages in some runs and larger pages in other runs, would that have a bearing?

A. Not insofar as the thing we are talking about now, no.

Q. All right. Now, what is the next factor?

A. The degree of similarity among the group of runs as to the specific features being printed. In other words, how many times does Dick Tracy appear here; what degree of tie-in do we have from the run to another.

Q. That would have a bearing, would it, on the cost?

A. Yes.

Mr. FELDMAN: At this time I would like to offer in evidence this affidavit from Mr. Appert, from the Kimberly-Clark Corporation.

Mr. RAICHLE: Sure, it is all right with me.

The COURT: All right, mark it received.

(Thereupon, the Affidavit referred to previously marked

D-2, for Identification was received in Evidence as
1050 Exhibit G-3.)

By Mr. FELDMAN:

Q. Mr. Lynde, I show you Plaintiff's Exhibit G-3 and now ask you, will you start from the beginning, tell us whether or not you wish to change your testimony in regard to what the price of newsprint would be in your opinion under Projection No. 2 in regard to the exhibit before you, in regard to the information of the exhibit before you?

A. No, sir, I do not wish to change it.

Q. All right. Now, does the exhibit before you furnish you with any information which would support the opinion of which you gave yesterday?

A. Yes, sir.

Q. All right. Now, will you start from the beginning and tell us what information that exhibit imparts to you and why it would support the opinion you gave yesterday?

A. The affidavit indicates—

Mr. RAICHLE: I have to object to any such question as that. The witness, be he expert or otherwise, saying, "This subject substantiates what I say", that is for Your Honor to decide.

The COURT: I will have to take this as asking for a conclusion in testimony; objection sustained.

1051 Mr. FELDMAN: Would you tell us, Mr. Lynde?

Mr. RAICHLE: I thought he was sustaining the objection.

The COURT: I sustained the objection.

Mr. FELDMAN: Oh, all right. I have no further question.

The COURT: May I ask a question. Are you fairly familiar with the operation of this man Hornaday of Southern Color Print, the nature of his operation?

The WITNESS: Very generally, sir.

The COURT: Let me ask you this; last April, as you know, I had a temporary injunction here with respect to the transfer of any run from Wilkes-Barre down to Sylacauga. In my permissive opening of that plant and to my surprise, frankly, I have now learned that Hornaday has increased his output four times, all of which virtually came from Wilkes-Barre, 1052 the International Color Print. Now, you have been in the business ten years. Can you give me any reason why that could come about, that he would be able to take that market over from Wilkes-Barre in the fashion that he has?

The WITNESS: I do have an opinion, sir. It is only that.

The COURT: I would like to have that, if founded upon some experience.

The WITNESS: It is founded upon general trade conversation mainly.

The COURT: You mean rumors of the trade as to what he did?

The WITNESS: Pretty much.

Mr. RAICHLE: I don't object to it.

The COURT: All right, let me have it, what you hear in the trade and if you have a source, let's have the source.

The WITNESS: Well, there have been a lot of conversations. I don't know as I could identify anyone.

1053 THE COURT: Is it a pretty well agreed-upon version of what happened in the trade, from your point of view and there is no objection to that?

MR. RAICHLE: Not a bit.

THE WITNESS: I believe so. I have only heard one theory.

THE COURT: All right, let me hear it.

THE WITNESS: Well, Mr. Hornaday's own personality and background and as a salesman, his salesmanship, are a factor. I think he has personal relationships with the publishers that have been a major factor in this. This is one thing. Coincident with Your Honor's restraining order, or injunction, whether as a result of it or not, I don't know, but coincident with it, there was, according to the trade rumor, a ceasing of some types of business operations that had been going on, specifically with reference to truck transport, which removed some bearing that had stood in the way of Southern Color Print before that time.

THE COURT: I don't understand that. Will you tell me what you mean?

THE WITNESS: I guess it is what the Government calls predatory practice. I don't really know.

THE COURT: Well now, let me ask you, is that your explanation?

THE WITNESS: That is the best I can do, sir.

THE COURT: Now, Hornaday, you heard his deposition yesterday, said that if certain alleged predatory practices cease and are no longer permitted, tie-in sales permitted or indulged in, that he fears no competition from Sylacauga; he would welcome it, but he has nothing to worry about in order to continue the enterprise which is doing well as I mentioned, four times over in a few months' period. Now, do you, having 1055 had your experience in the business, believe that or don't you have an opinion?

THE WITNESS: I know he said that, I heard the testimony. If I were in his position I would fear the reopening of Sylacauga. I would not welcome it, but in the fair competition, you can't reasonably object to it. I don't know what the man meant.

THE COURT: I just wanted your opinion. I appreciate, Gentleman, that I am not talking in a legal fashion here. I want the opinion of the man in the business, to the extent he is able to give it. All right, that is all I have.

MR. RAICHLE: Just a question or two suggested by His Hon-
or's inquiries.

REROSS EXAMINATION

By Mr. RAICHLE:

Q. You don't object to competition as such, do you?

A. Well —

1056 Q. As such?

A. No, sir.

Q. And if someone were tomorrow or the next day, figuratively speaking, to construct and operate a plant comparable to yours and compete with you in your presently favored geographic area, that is the area where you are presently operating, you would have no objection, you might wish they would not, but you would have no objection, would you?

A. I think we would welcome it in a long sense.

Q. In other words, you subscribe to the proposition that in your business competition is wholesome and healthy?

A. Absolutely.

1057 Q. And given the absence of predatory practices of one kind or another, competition as such is not to be feared, not to be objected to. Isn't that true?

A. I believe that.

Q. Yes, and you have had competition from Lufkin in certain restricted areas of your operation, haven't you?

A. Apparently not very restricted, sir.

Q. Well, you don't object to it?

A. We don't feel that we have any basis for objection. We are not happy about it.

Q. That's right. Now you know of no basis for objection that Mr. Hornady could possibly have or that Southern Color Printing Company has in the absence of predatory practices, do you?

A. I have none, no, sir.

Q. And did you hear that part of Mr. Hornady's deposition where he said he could think of nothing wrong that Greater Buffalo Press or International Color Printing Company had ever done?

A. Yes, I heard that.

Q. And did you hear his admission that the predatory practices were those which it is alleged he engaged in while he was with King Features?

1058 Mr. FELDMAN: I am going to object to the question Your Honor. This is getting into previous testimony in the deposition and —

The COURT: Overruled.

By Mr. RAICHLE:

Q. You heard that, didn't you?

A. I heard all of the deposition, I believe, sir. Yes.

Q. So now, getting back, and I am not going to go through these figures again, but on your exhibits if I may borrow G-1 and G-2—maybe I am guilty of having it. Here they are. I have them, I am sorry. Now, Mr. Lynde, when you said that the revenue figure wasn't meaningful in our Projection No. 2 or that in substance, I notice you made no change in it on your projection, did you?

A. I did not.

Q. And you changed the figures with which you disagreed, didn't you?

A. Well, I disagreed with all the figures I changed.

Q. Well all right, was there some reason for not changing your revenue figure, although you changed all the others with which you disagreed?

1059 A. Well, I don't have basis for adjusting that figure. I don't have the information.

Q. That is just the point. It was clear from the projection itself that the revenue figure assumed was a multiplication of the average per thousand received by Greater Buffalo Press with respect to those Dunkirk runs which were permitted to be transferred, isn't that true?

A. That is what it says.

Q. It says so frankly, openly and plainly, doesn't it?

A. Yes, sir.

Q. In the notes. Now, if you will ascribe or apply the 56 percent figure against the \$5.58½, the average per thousand, you get the \$3.12 which is one cent less for newsprint than the \$3.13 you were talking about, right?

A. I believe there is only a quarter of a cent difference.

Q. Well, let's say it's the same.

A. For all practical purposes, it is the same.

Q. So then our 56 percent figure on that basis cannot be challenged, can it?

A. If the revenue figure is correct and the 56 figure is correct, the newsprint figure is correct.

1060 Q. But, if the newsprint figure which you give is the same as the 56 percent made to this revenue figure, in

the absence of a challenge to the revenue figure, you can't challenge the resulting \$3.13, can you?

A. But I do challenge the revenue figure.

Q. You are assuming that there would be a higher revenue?

A. Not necessarily.

Q. Are you assuming that there might be a lower revenue?

A. I am assuming there is a better way to project the revenue than the way that was used.

Q. And if you knew a better way, you would have projected it, wouldn't you?

A. If I would have had the information, I would, Yes, sir.

Mr. RAICHLER: That is all.

The COURT: Let me go back a minute for some information on the Southern Color Print. You said there were certain trucking practices, I believe you said which had a bearing with those who do business competitively, which heretofore existed.

1061 The WITNESS: That is my understanding.

The COURT: I don't know what you mean by that. What was the alleged practice?

The WITNESS: I am repeating conversations and rumors.

The COURT: Something in the trade, in the current trade?

The WITNESS: These things go back three or four years.

The COURT: Tell me what your theory as to why this was an unhappy practice, whatever it was, is, insofar as competition is concerned.

The WITNESS: My understanding is that there was some arrangement for transporting the comics over the distance from the northern plant to the southern newspaper.

The COURT: What northern plant?

The WITNESS: Well, any of the three, I presume.

The COURT: Are you talking about International?

The WITNESS: International, Dunkirk, Greater Buffalo. In the case of the runs which were gained recently by Southern

Color Print, it would be International, or Eastern.

1062 The COURT: A method of transporting by truck, you say, the finished products?

The WITNESS: Yes, in some way, which in some way overcame the geographical advantages which Newsport News would otherwise have enjoyed. Now the details, I do not know.

The COURT: Isn't that just good business practice?

The WITNESS: It certainly may be. I don't know.

The COURT: I mean if somebody can compete with you by getting a better method of transportation, and it is without tie-in, is there any complaint to be had with that?

The WITNESS: Not what you have said, no, sir.

The COURT: Do you know anything more about it?

The WITNESS: Only it doesn't make economic sense to be able to haul a thousand or so miles at no more expense than you can haul ten or twelve miles, that is all.

The COURT: All right, but you still have got to make a profit some way to run a business, is that right?

1083 The WITNESS: Certainly must make a profit overall.

The COURT: That is all I have. Take a recess.

(Whereupon at 11:40 a.m. a short recess was taken.)

1064 (Proceedings resumed pursuant to recess, commencing at 12:00 noon.)

Mr. RAICHL: If I am thinking clearly and keeping tract of things, the case comes back to me, or is still with me, the witness having been sworn out of turn. By the way, I have no objections to accommodating any other witnesses you may have if you want to put them on out of turn.

Mr. FELDMAN: No, I have none.

Mr. RAICHL: I would offer then, your Honor the transcript of the proceedings before Judge Lloyd F. McMahon in the Southern District, that is, the United States District Court for the Southern District of New York on November 20, 1962, which relates to the service of the subpoena and the affirmations of the witness, Hornady and the Court's findings.

The COURT: Any objection?

1065 Mr. FELDMAN: Yes, I do object. I feel that isn't a part of this proceeding. This took place in the Southern District of New York. The only thing before this Court is the particular deposition, what took place at that deposition.

The COURT: His credibility is in issue, isn't it?

Mr. FELDMAN: The record on its face is not complete. There are probably affidavits which were part of that proceedings.

Mr. RAICHL: I will offer all the moving papers and the affidavits.

Mr. FELDMAN: I have no objection.

The COURT: All right, received.

(Whereupon, transcript referred to was marked Defendants' Exhibit D-3 in evidence.)

Mr. FELDMAN: Are those all of the moving papers, the other side also?

Mr. RAICHLE: These are the motion papers of Mr. Hornady and his counsel, in my right hand are the answering affidavits.

1066 Mr. FELDMAN: The record is complete then, is that right?

Mr. RAICHLE: Yes.

(Thereupon, documents referred to were marked Defendants' Exhibits D-3A and D-3B in evidence.)

Mr. RAICHLE: Conceiving that I have made out a direct case in that my motion papers, the form of the affidavits, have not been controverted or disputed, there exists, as I see it, grounds for appropriate findings by your Honor on which to vacate or substantially modify the order of June 22, 1962, and I would rest. I am doing so—I have in mind that this testimony of this last witness, as recorded, is subsequently to be offered 1067 by the Government, and then I will reach a conclusion as to whether I wish to rebut.

The COURT: Yes.

Mr. FELDMAN: Well, I gather then your Honor does not want to hear any arguments?

The COURT: I want you to finish your proof, whatever you have in mind.

Mr. FELDMAN: Yes. Before continuing then, the Government would like to have made part of the record the requests which the Government made upon counsel for the defendants for certain information in connection with this motion. We have agreed that we will make the demand upon the defendants and counsel for the defendants agreed to supply us with the information in lieu of any motion being made by the Government.

I have that specific request here, and I also would like to 1068 have form part of the record a letter from Mr. Raichle, addressed to me, in which he states that in regard to the information requested in 2A which requested the particular runs in Projection No. 2, or which were considered in Projection No. 2, he stated that the figures set forth there do not derive from specific runs at International Color Printing, is that correct?

Mr. RAICHLE: No objection on that, this is the fact.

The COURT: All right.

(Thereupon, documents referred to were marked Government's Exhibits G-4 and G-5 in evidence.)

Mr. FELDMAN: Mr. Smith, please?

ROBERT E. SMITH, called as a witness in behalf of the Government, and being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. FELDMAN:

1069 Q. Mr. Smith, will you please state your name for the record?

A. My name is Robert E. Smith.

Q. Where do you live?

A. I live in Newport News, Virginia.

Q. And what is your employment or occupation?

A. I am General Manager of the Daily Press, Incorporated, which publishes two daily newspapers in that city. I am also General Manager and Assistant Treasurer of the Southern Color Print Corporation, a wholly owned subsidiary of Daily Press, Incorporated.

Q. In regard to Southern Color Print Corporation, what are your duties?

A. My duties at the Southern Color Print Corporation is to see that the corporation affairs are moving along in satisfactory fashion. That includes checking on the production and the acquisition of new work, and the negotiations of all labor contracts with unions that we have at the plant.

Q. Are you acquainted with the production facilities at Southern Color Print?

A. Yes, sir.

Q. Will you describe the facilities available at 1070 Southern Color Print Corporation?

A. At the present time we have a very modern building, a one-story affair, with a press room and stereotype department, and a suite of offices, locker rooms, warehouse facilities, loading platforms, and so forth. Included in the equipment are two presses in the press room, and in the stereotype department we have the usual stereotyping equipment that would be required for a plant.

Q. Now, do you have anything to do with the selling end of the supplements printed at Southern Color Print Corporation?

A. No, I have nothing to do with the selling end of it since that was turned over to Atlantic Features seven years ago.

Q. Are you kept informed, in the regular course of your business, as to selling activities?

A. I check on the activities with respect to submission of prices, and so forth, but Mr. Hornady of Atlantic Features does the selling. I do nothing of that.

Q. Is he responsible to you, Mr. Hornady?

A. No, sir.

1071 By Mr. FELDMAN:

Q. Now presently, how many volumes—I mean, what is your production in terms of volume of fours per week?

A. In production at the present time, something around two and a half million fours per week, which will be increased to approximately three million when the Norfolk run goes in in March.

Q. And about six, seven months ago what was your volume of production?

A. It was approximately or slightly under two million.

Q. Now going back to 1961, what was the volume of production then?

A. A million eight hundred thousand.

Q. That is the beginning of the year, is that correct?

A. That is right, yes.

Q. And during the preceding year, had Southern Colorprint acquired new business or increased its volume of production? That is, going back to 1960?

A. 1960, the only contract we received in that year, in 1960 was Rome, Georgia, which was in January of that year. We received no more during 1960 and none at all during 1072 1961, and, in March of 1962, we started printing, I believe it was Macon, Georgia. Two started in March; one was Macon.

Q. Now since April, 1962, how many new runs have you acquired?

A. That is April of this year?

Q. Yes, that's right. Well, supposing we go back to April, 1961, how many runs have you acquired?

A. That is five runs, two of them at one newspaper plant.

Q. And what about the Norfolk run?

A. Norfolk is another one, hasn't started yet. That makes six.

Q. By next March you will have six runs, is that correct?

A. Yes.

Q. And by March, what will your volume of production be?
 A. I estimate around three million.

Q. Now in the past has Southern Colorprint ever had a run of production of three million?

A. No, sir.

Q. Now at the present time, what is the full printing capacity of Southern Colorprint?

A. Why, I would estimate we are running about half capacity.

1073 Q. At the present time?

A. We are running three shifts five days a week, and on a five day basis, that would be half capacity. We can run on Saturdays if we want to, but we are not running half.

Q. And with the acquisition of the new run in next March, will your percentage or you will be operating at less capacity, won't you?

A. Oh, it will only increase it a couple days, a couple of shifts.

Mr. RAICHLE: I didn't get that.

Mr. FELDMAN: I mean, you would be operating at more capacity.

The WITNESS: Not much more than we are now on a percentage basis.

By Mr. FELDMAN:

Q. No, I asked you originally what capacity you are now operating at?

A. Well, oh, at this point? In five days there is thirty shifts on it. We are running fifteen shifts now, so we are running half capacity.

Q. Of your total possible capacity?

A. That's right. Excluding Saturday. We can run on a Saturday but we have not done so.

1074 Q. Now in regard to the labor negotiations at Southern Colorprint, who handles that?

A. I handle that.

Q. And do you also handle labor negotiations for the daily press?

A. Yes, sir.

Q. Now based upon your experience, is there any relationship between the wage scales as to newspaper printing and as to printing in the supplement field?

A. Definitely there is a relationship.

Q. Now what is that relationship?

A. Well, the press itself is basically the same type of printing equipment. It may be a different make, different number of cylinders, and so on, but the press can turn out a regular newspaper or a regular comic section, so basically the operation of the press from the journeyman's and the pressmen's standpoint is very similar, but the men at the color plant must be more adept at matching colors and registering the plates, and he receives a printing wage over the scale of what we call the black and white in the downtown plant.

Q. Do you know if that is only true in your area, or do you have any knowledge whether it is true in other parts of
1075 the country?

A. My investigation at the time we negotiated and some material furnished by publishers or furnished by the union representatives shows a difference in the scale of printing between the newspaper pressmen and the color pressmen.

Q. Now Mr. Smith, pursuant to my request, did you examine and analyze Exhibit A to the defendants moving papers here, a statement of projected annual sales and net income, and I show you now Exhibit A?

A. Yes, I have seen this.

Q. Now what, if anything, did you do in connection with my request, tell me. Go along and tell us just what you did.

A. Prior to this time you asked me to look at some other figures, and before I had the chance to finish my studies of that, you told me you had another set of figures so I stopped that and went onto this set, and I recall that I was pretty busy about that time. You called and wanted to know if I had had a chance to complete the work, and I told you that I had been pretty well occupied and I had not finished it, but I wanted to do it myself rather than leave it to anybody else. So I took it home
1076 and worked on it, and I decided that, after looking at this report, that it might be better for me, now this is my own decision, because of the lack of time as much as anything else, that I would confine myself to Projection No. 1 since the estimated or projected annual production would be somewhat in our classification. So the Projection No. 2 I examined and made a study, but I made no conclusions because of
1077 lack of time.

Q. Well now, in regard to Projection No. 1, what is the first thing you did?

A. The first thing I did I—on Projection No. 1—is the first thing anybody would do. If you have a loss showing in here and you are supposed to give an explanation and you are asked whether there is a loss, you have to see if the income would meet the expenses, and if the income was satisfactory and in order, then you look over the expenses and decide whether there were some items in there that could be questioned or cut out or that seemed a little high and as manager of a plant it would be called to me to try to bring the expense in line and up to me to cut some of these items in here.

I would look at it at that standpoint.

The first thing I did was look at the sales and you furnished me with some information of the newspaper included in the runs and the runs down there, six newspapers and from that information that you gave me I was able to ascertain that the figure for the income was, well, I would say it would be almost correct. I mean, I was so close to the figure here I saw no reason to doubt the figure.

Q. In other words, for all practical purposes it was accurate?

1078 A. That is correct. I think I was a few thousand from that. That would be changed from the press run. These contracts were signed at a certain figure and during the process of a newspaper's growth they would order more and that would affect the total.

Q. Now, going—what did you do after that?

A. Well, I went through the production costs and of course, the big item in there, the big items in there are newsprint and payroll and those drew my attention first and I decided that the best way to make some comparison, since we were dealing with a projection or estimated plant, that wasn't an operation, the best thing to do would be to see how it compared with our plant, our actual figures; like reducing everything to one common denominator, and except for one figure, the average cost per thousand four-page sections in our plant—we have over eight pages in sections, so I reduced it to four-page sections to get a comparison of their cost per thousand against our cost per thousand—our actual figures for the ten months, January

1079 through October, the transition period during a modernization of the plant, a new press, and so on, I took those figures regardless of unusual expenses and made a comparison between the two.

Q. Now, you broke down first the figures in Exhibit A, is that correct, sir?

A. That is right.

Q. And I show you now and ask you whether this is the breakdown you made of that, is that correct, sir?

A. This is the breakdown I made and I did this calculation myself and this is the only sheet that I gave you, that I didn't typewrite. I typed everything else and it is—I did it myself—so I could say that I did it. Now, this is the breakdown, the per thousand unit—

Mr. FELDMAN: Excuse me, I will ask that it be marked as Plaintiff's Exhibit 6 for Identification.

(Thereupon, the Document referred to was marked Plaintiff's Exhibit G-6 for Identification.)

By Mr. FELDMAN:

Q. Now, what was the next thing you did, Mr. Smith?

A. The next thing I did, I took our figures for our 1080 figures for our run, this annual run here, 178,568,000 four-page units and in our ten months of our actual production, it is 101,000,000—

Mr. RAICHLE: Excuse me, do you have another copy of that, that I could have?

Mr. FELDMAN: I don't think I have another one.

By Mr. FELDMAN:

Q. Go ahead.

A. Over 100,000,000 units in ten months. I know that in ten months it is not a fair comparison, because I have to take the ten months' figures and divide them into fixed charges like taxes and insurance and depreciation and itemize them per thousand on that basis. If I had used an estimated twelve months I would have got it better.

Q. So you committed it to paper, didn't you?

A. I made a study of that, yes.

Q. Is this the paper?

A. Yes, that it is. That is Projection 1 in our actual ten-months period.

Mr. FELDMAN: I ask this be marked as Plaintiff's Exhibit 7 for Identification.

(Thereupon, Document referred to was marked Exhibit G-7 for Identification.)

By Mr. FELDMAN:

Q. Now, looking at Plaintiff's Exhibit 7 for Identification, what does that indicate as to the work you did?

A. You want me to start with the top item and go down?

Q. Just give me a general description of what it represents.

A. It shows a comparison from the average cost per thousand four-page units, projection 1.

Q. What conclusion, if any, did you reach thereafter?

A. Well, it might be better to come—to sum it up.

Q. All right, find, do that.

A. Newsprint I found out their average cost was \$3.00 and .128 per one-thousand four-page units, which is \$0.14 under what our average cost is, \$3.27, and I concluded that with six runs in that plant they would not have as much waste as we would with 28 runs, so there is stoppage of presses and waste-
age of paper and the price of \$0.07 a pound. Then the roll of
paper might be narrower than ours and they are in close
proximity to Coosa River; they might get a better price.

I didn't say anything about the newsprint average price.

Q. You accepted that figure?

A. Yes, I accept that, because it was virtually what our price is within .02 of a cent of what our average price is.

Q. What did you do with regard to the payroll?

A. The payroll; I included the administrative in their pay-
roll, since it is in ours. It gave them \$1.51 and ours is one—
\$1.99; we were \$0.48 higher. I would think that would merit
some attention. And 28 runs, stopping and starting the presses,
changing plates, and so on and so forth, six runs on the press,
four of a total page of ten and two of eight. It takes over 400
plates in our plant to plate up our 28 runs. That would call for
more serious type of expense. Then, handling more shipments
in the mailing room, keeping them straight, and so on, would
require more attention there, so I can see where some reason
for our expenses being higher. I am not questioning their figure
on this, because I only wanted to find out how we stood on it.

Q. Now, what is the next item?

A. The next item is supplies and metal. Two things
1083 struck me in Projection 1 and 2 both, that startled me.

First is that the item for supplies is \$19,946.00 and the
item for repairs is the same thing and that would look kind of
peculiar to me, that they would be exactly the same in Projec-
tion No. 2 for the bigger runs, supplies, repairs and the main-
tenance and upkeep, and so on, on the others and they looked

kind of funny to me, because they both have them with higher than our plant. We had a lot of repairs this year on the breakdown basis. The metal and supplies, putting metal with supplies, raised our figure to \$0.11 and there was already 11. We tallied exactly on supplies on a per-thousand basis. On repairs, their repair bill was more than twice ours. The next item was on the freight and express, which we take to be what we pay for our supplies and machinery and things we receive and our price is about 1c per thousand while theirs is almost 6c. I have no explanation for that, why the freight should be that much higher than in our plant, but we have it down that way. Now, the next item is power. I notice their power is heavier than ours and they say in the notes in here that the power is higher because

of the necessity for more starts and stops and less efficiency in the arrangement of the runs. Well, we have to 1084 start and stop almost five times as often as they do in this projection, so power factor was a real puzzle to me, why it should be so much higher than ours. We have an item for gas, heat and water, that they seem to include in real estate. The telephone and telegraph, their figure was a great deal higher than ours. The breakdown is not much different. Postage is about the same on a per-thousand basis, although dollarwise a good deal higher. They have an item under "Employees' Benefits" and so I included our pension contributions and our life insurance and hospitalization that the company pays for, in with that and we came out close to their figure on a per-thousand basis. Depreciation was a terrific difference between theirs and our figure. I knew that ours is based on a formula that our management has held for years and I don't know what their formula is. Ours is projected on a long-term basis and our depreciation item is less than probably theirs, if theirs is on a faster rate. Theirs is \$0.28 a thousand and ours is \$0.08; they are \$0.20 a thousand higher in depreciation than we are.

1085 Real estate, taxes and insurance, they are almost three times what we are. On that basis, as I say, I don't know what is all included in that. The item says they include air-conditioning and heat, and so on, which I have as a separate item and we have heat down there too. We have taxes to pay and repairs and so on, and so their milling in Sylacauga is rated higher than our billing. I don't question their figures, whether they have worked that out on an accepted formula for rate of

depreciation, then they would probably be correct. I am not questioning that.

On the miscellaneous expense, why, there is a slight difference on that, but that is not material. The items I have grouped together, what we call cost of production items, is \$6.00 and approximately 2c per thousand units. Now, on ours it came out to about \$6.19, the difference leaving \$0.17 in the favor of the projection No. 1. We have in ours, which is actually a figure for ten months, although we are \$0.17 higher, we made a profit in that ten months period.

Q. Now, when you say \$0.17 higher, your figures are based on ten months?

A. Ten months, yes.

1086 Q. When you converted the ten to twelve months what would happen in proportion?

A. You would be increasing the run then by 20,000,000 more. 20,000,000 more figured into these figured charges, the depreciation and taxes and insurance, to do so materially, I would say would bring the difference down to maybe 8 or 9¢.

1087 Q. So you would still be higher then?

A. Slightly higher. Eliminated was one thing—before we go further on the payroll, I didn't make a comment at the time, but they say the payroll—they adjusted it from the Dunkirk Plant upward for anticipated cost differential. This is the plant in the Far South and here is an industry in New York State, and they are adjusting labor rates upward in a move to the south, which is contrary to the industrial picture. We notice throughout the country plants are locating in the south because of more favorable labor rates. I couldn't understand that, and there is no other explanation. Now, eliminated from your Projection No. 1—you furnish me three items; one, sales expense, one on travel expense, and one on interests. Now, I computed what the cost would be on the per fours 1000-page units for these three items. I finally came out to \$6.41, whereas our total was \$6.19. So \$.22 is in our favor on that kind of a basis. But I'll put that in there for the record only. We have no comparable figure to compare with sales expense. We have travel expenses, going to meetings, and so forth, but we have no comparable sales expense.

1088 Q. Going back, Mr. Smith, to what you call the labor costs in the projection, do you presently know what the

labor rate is in Sylacauga, Alabama for a color comic supplement pressman?

A. No, there is no contract on file for Sylacauga that I can ascertain.

Q. Now, based upon your experience, do you know whether there is any method or means of estimating the wage scale for such a pressman in Sylacauga?

A. I think a simple way of doing it would be to see what the differential between the color pressmen and the newspaper pressmen is, like in the City of Buffalo and Dunkirk where you have two contracts, take Dunkirk where you can get a comparison.

The COURT: Are there available sufficient skilled men in this art in Alabama or is it necessary to import them? Is there a good market for skilled pressmen, native to Alabama, do you know? I got the impression possibly that these people have in mind bringing some folks from this area and possibly paying them a premium. Give me your opinion?

1089 The WITNESS: We can go back to when we started up our plant at Newport News in 1948. We found there was not a pool of available help that would readily move. We trained our own pressmen in our own plant, outside of the few we have been able to hire since. We have trained more than half of the men. We have taken the regular newspaper pressmen and trained them in colorwork.

The COURT: You don't know there is a pool in Alabama now available? I certainly don't.

The WITNESS: Well, there is probably pressmen available, union pressmen that can be gotten. The union signs a contract with the company and has the responsibility to help them get labor. We insist that is what our unions do. If we need extra help in the press room we tell the president of the union we want journeymen, here is the situation, and so forth, and they write to the International Office. We 1090 have got colored pressmen that way too. We have a responsibility to live up to the hours and wages and the overtime; they have a responsibility to furnish us with help. We insist they do it.

By Mr. FELDMAN:

Q. I asked you, I believe, Mr. Smith, whether you knew any methods or means of estimating what the wage scale would be in Sylacauga, Alabama, for color comic supplement

pressmen, and I believe you were telling me the means you would use to ascertain what the wage would be?

A. I think you could do it right here in this city. You could do it in Newport News between the two plants there. You would have the labor contracts on file here. That would show you the difference between the labor rates. It would be a—a fair and equitable way would be to take the premium pay and apply that to the highest prevailing wage in Alabama so you would be getting a comparable figure to use as a probable starting place for the journeymen at Sylacauga.

1091 Q. Do you know whether there is any such figures available which you could use as the basis in order to make such an estimate or projection?

A. Yes, sir, there are figures available like this through our public services; also they are available in the United States Department of Labor.

Q. Now, pursuant to my request did I turn over to you a copy of the union wages and hours, printing industry, from July 1, 1961, and trends from 1907 to 1961, which is Bulletin No. 1315 of the United States Department of Labor, and also a sheet attached thereto indicating the union scales and wages and hours in the printing trade of Birmingham, Alabama, from July 1, 1961 and July 1, 1962?

A. You showed to me, yes.

Q. What, if anything, did you do thereafter?

A. Well, I took the report, studied it, and found out it listed these wage scales in here. They list the wage scale there, and it is in agreement with Buffalo. For Buffalo, here under rate per hour, day work, pressmen, \$3.519 per hour; that is about \$3.52. For Birmingham—the rate in Birmingham is listed in here as—the wage rate is \$3.293 per hour, pressmen, day work.

1092 Q. Now, with those figures, what did you do, sir?

A. You furnished me with a figure too for the effect on the contract for the Buffalo-Dunkirk area for labor pressmen?

Q. Yes.

A. And I ascertained the Buffalo rate or the Dunkirk rate would be \$4.064 per hour. The Buffalo newspaper rate, as shown in this book, is \$3.834; and the extra premium rate

for color pressmen in Buffalo is 23 cents difference. Now, in Birmingham the rate was \$3.293, so I would add the 23 cents to that to get the premium rate. That would give you a rate, estimated, for Alabama for color pressmen, \$3.523. Now, if I was negotiating I would check that against our figures in Newport News and find that the 23-cent differential between the color pressmen and the regular pressmen, would be 1.186, which is very close to the figure up here and on the percentage basis probably right in line with it, because our rate is 3.493, which is less than they pay up here, and the regular pressmen, 3.087 per hour, which is less than they pay here. The difference is .186. I have written it on the sheet.

Now, I went a step further and I subtracted from this color pressman rate in the Buffalo area the estimated rate for color pressmen in Alabama. It came out to a difference of .541 or 54 cents an hour. That was a rate 13.3 percent less than the New York rate. I would think the projection payroll of \$249,326.00 that they have listed in here, which includes 42 cents per 1000 markup, which I am at a loss to know the details of, they add ten percent to that for employees benefits, \$24,932.00, giving a total of direct and indirect labor costs of \$274,258.00. From that I took 13.3 percent and ascertained a resulting figure of \$36,476.00. Now, that indicated the extent of a probable overloading of the labor costs in Projection 1, which, if correct on its face, would reduce the estimated loss in Exhibit A by \$36,000.00.

Q. Now in regard to power listed in Exhibit A, did you question that, sir?

A. I wanted to find out the background on the power. It stated that the power expense had been estimated on the basis of the 1961 experience at the Lufkin plant in Texas. Power costs for Projection No. 1 had been estimated to be incurred at a rate somewhat higher than Projection No. 2 due to more frequent starting load factors at less than full capacity, so I would ascertain maybe we would be in the classification of more frequent starting, since we have four times as many runs. So I decided to take our figures in Newport News and project them into Sylacauga to see what rate we would pay in Alabama, if we had been located in Alabama during this ten month period.

Q. And what, if anything, did you do?

A. I obtained the rates in effect in Alabama and took our power consumption and applied it against our actual use of power to ascertain the difference between the two. I have here in my hand the certification from the Federal Power Commission of the rates on file for Sylacauga, Alabama, and they are—they have all the rates listed in here in this chart.

1095 Q. Now just for the record, Mr. Smith, where did you get those rates?

A. I obtained those from you.

Q. I gave them to you?

A. Yes, and the other one is a certification of power load factors for Virginia, and the Virginia Electric Power Company serves our area. Now we receive power from the plant that makes power out of coal; it is not water power, like I presume Alabama is, so I took our power consumption for each month there and compared it with what would have been charged in Sylacauga had we been using the same power in Sylacauga. I found there was a difference of \$51.48 for the nine months of this year, and this includes air conditioning and so on that we have in our plant. Heat offices by electricity, too, so the projection, I mean the projection figure in Exhibit A, I think of Projection 1 is somewhat high. I don't know what the power load is at Lufkin, Texas, but in Alabama it is not too much different than Virginia and we turned out almost as much. Our power load factor would be around six thousand; theirs is twelve thousand, so I would question that figure on power.

1096 Mr. FELDMAN: At this time, I would like to offer in evidence certified copies from the United States Department of Labor of union wages and hours in the printing industry as of July 1, 1961, and attached to that, the union scales of wages and hours in the printing trade in Birmingham, Alabama, from July 1, 1961, and July 1, 1962. These are both certified copies here.

Mr. RAICHLE: I have no objection.

The COURT: Received.

(Whereupon, Exhibit G-8 for identification, was received and marked in evidence.)

Mr. FELDMAN: At this time I would like to offer in evidence a certificate bearing thereto and mark as Exhibit A, the power rates for Sylacauga, Alabama, and it is certified by the Federal Power Commission.

Mr. RAICHLE: No objection.

The COURT: Received.

1097 (Whereupon, Exhibit G-9 for identification was received and marked in evidence.)

Mr. FELDMAN: At this time I would like to offer in evidence the National Electric Rate Book of the State of Virginia, and certified by the Federal Power Commission.

Mr. RAICHLE: No objection.

The COURT: Received.

(Whereupon, Exhibit G-10 for identification was received and marked in evidence.)

The COURT: Are there remarkable differences that he is going to comment on between Exhibit A and his estimate of what the costs should be?

Mr. FELDMAN: There might be one, slight one.

The COURT: Let's hit the one; let's not go over the ones he is not going to make a differential on.

By Mr. FELDMAN:

1098 Q. Directing your attention to Exhibit A as to the selling and administration costs, do you have any further comment to make other than what you have previously testified to?

A. No, I would—my comments, observation, is that those figures are on the face, I think, too high. I understand that the Judge—this court order of last June—was six contracts, would be put in that plant and in close proximity to Sylacauga, and I see no reason for \$10,000.00 of travel to hold that business, if that is what is going to be held there for the period of the order. The sales expense would involve not seeking out new business, and I question whether there would be \$15,000.00 looking for new business, if the plant could not add any more runs. Those two items are \$25,000.00. The interest charge of \$45,000.00 depends upon accounting practices, and the value of the property and so on, and they say that is for a loan that had been made and that is not an operating expense. It is an expense to be taken care of for tax purposes only, and comes out after you have ascertained your operating profit and it is a return on investment, and it is not, to my notion, to be considered 1099 as an item of production costs. We have no comparable figure at Newport News to load the cost factor with. Those are the items I would question.

Mr. RAICHLE: I object to the word "load". To "include" in the figures.

The COURT: Will you accept that?

The WITNESS: To what?

Mr. RAICHLE: You said to "load" the cost figures. I said "include" in the cost figures, not "load" them.

The COURT: Well, that is the term you use, meaning to include.

The WITNESS: I said we didn't have any comparable figure to load our cost figure with, and I stand on that.

The COURT: Now other than those comments, you have no criticism of the projection in Exhibit A.

The WITNESS: I question a few items through there.

The COURT: Of any consequence?

The WITNESS: Supplies and repairs. The total amount, dollar-wise, Your Honor, isn't concerned, of those operating things; all of them added together doesn't run up so much for 1100 thousand page units.

The COURT: Is that all?

Mr. FELDMAN: Well, all right, I will continue then.

By Mr. FELDMAN:

Q. Now Mr. Smith, going on, there has been some testimony here that Southern Color Print since April of 1961 has made a windfall or has been enriched through acquiring additional runs. Now will you tell us the manner that happened and what the circumstances were, as far as you know?

A. At that time, we had 24 runs in our plant. We lost one, and we will add on six more to make 29, the Norfolk run. So since that time, they have been increased by six runs. The amount of production in millions of units looks considerable but these runs happen to be larger runs. I noted—didn't mention it in this item here, but I noted that half of the Projection No. 1 is taken up by one contract. So you can put a run on your press that runs for six or seven shifts on the thing, why you can save some real money. Now we have gotten some larger runs recently, and we were able to get those larger runs because the tonnage—the weight of the shipments each week—was considerable, and by shipping two weeks at one time we were able to get a lower trucking rate than you get by shipping week after week. So we have a warehouse big enough to hold the two runs at one time so, in Charleston, West

Virginia, we were able to get the trucker to give us a better rate for that shipment twice a month and Beckman, West Virginia, within 75 miles, was able to share that rate, so that truck had that full load for that shipment. In the case of Greensboro, the newspaper has two runs. We have runs in Carolina that this trucker runs through Greensboro and he was glad to have that additional tonnage to take with him. He goes through Greenville, and Ashville and Charlotte, and that gave that man a better rate. We gained that work on the basis of saveable transportation charges. By adding the shipping price and the costs together give us the contract in the case at Macon, Georgia, which we were able to obtain. One trucker who gave us his lowest rate happened to be the same rate for hauling from

Wilkes-Barre to Macon. Now he charges the identical
1102 rate. We know that from the rate the publisher says that he had been paying, so there was no advantage to us on that. We got the new contracts on closer proximity to our plant than either Sylacauga or Wilkes-Barre. The Norfolk contracts is across the river from us, within a short haul, and the people in Norfolk decided they would like to haul it themselves, so the transportation charge is their figure and they figure they can handle it themselves for less than it was hauled before by a truck from Wilkes-Barre. So that is the reason for the Norfolk contract. Now those newspaper printing contracts don't just hang around on trees waiting for somebody to pluck them off. These contracts are signed for one, two, three, maybe five years and they have a due date when they fall due and they must be cancelled by notice and in advance and so on, and not anybody can walk in the man's office and get it today. You got to work on it and bid on it and become more friendly and you get better operating procedure in your plant as we have been able to work up, so that the price then bid on it will land these contracts. We think our price was fairly close but
1103 with the shipment costs we came out ahead.

Q. Just to review a moment as to the actual geography involved, did you have a competitive advantage as to all these accounts, just as to the actual physical distance involved?

A. We had advantage on the shipping costs.

Q. As to all of them?

A. That's right, except for Macon, Georgia, which is probably closer to Sylacauga than we are. Well, it is.

Q. In otherwords, as to five of them, as to the distance you have an advantage as between your place and Sylacauga, is that right?

A. That's right.

Q. But this one run in Macon, Georgia, if Sylacauga commences operations, will have a geographical advantage, is that right?

A. That is right, some other of our runs would be affected by their being closer to Sylacauga than they are to Newport News. We are shipping beyond Sylacauga into the south, so those contracts are important to us as much as any new contracts, but we have found that the further away from Newport News, if our distance is further than the man is from Wilkes-Barre, we don't have much chance on him. This business of trucking is very important to it. It is so important that to save business, years ago we bought trailer-van trucks and we operate two of them now and deliver a lot of papers ourselves, right to the man's door, in order to hold contracts with service and delivery and we have various contracts for our trucks must be there within an hour of a certain time because of traffic conditions around the plant, and they are willing to, probably, pay us a premium for the shipping in order to cause less confusion in their hometown. One or two of them, that is the case. So we operate our own trucks for more than half of our deliveries and we have found that that is advantageous to us but, lately, we have been able to get some pretty good rates from one or two common carriers, specialty carriers who seem to want the business.

Q. You used the word "specialty carriers"?

A. When we first got in the business, the only rate was the posted scheduled rate which would hold, like shipping potatoes, machinery or something else. We ascertained and found out that there was an opportunity for a specialty—general cargo carriers to charge a different rate for hauling newspaper supplements, which would be magazine sections as well as comic sections, under the freedom of the press amendment to the Constitution, so we have now been able to get some of those same shippers to give us a lower rate. Some shippers who are specialty shippers, general cargo haulers, in the past have refused to quote us any rates but we have one or two now who are doing it.

Q. One more question: Since April, 1961, percentage wise, how has your volume of production increased?

A. The volume of production, around 40 percent.

Mr. RAICHLE: That doesn't include Norfolk.

The WITNESS: Well, it would be 50 percent with Norfolk, yes.

By Mr. FELDMAN:

Q. In otherwords, by next March or April, it would be fifty percent?

A. It is not actually in the plant and you go by production of what is on the presses, so on. It is not in the plant; will be in March.

Mr. FELDMAN: I have no further questions.

The COURT: Recess until 2.

1106 (Whereupon at 1:00 O'Clock P.M. the noon recess was taken.)

1107 [Caption Omitted in Printing]

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

Defendants Greater Buffalo Press, Incorporated, International Color Printing Company and Dixie Color Printing Corporation moved to modify a preliminary injunction issued herein on June 22, 1962, upon the ground of changed circumstances and further that the provisions of such injunction do not permit the opening and the operation of the Sylacauga plant of the defendant Dixie Color Printing Corporation without sustaining substantial operating losses (this court having previously found that the opening of that plant is in the public interest), and upon the further ground that the preliminary injunction had made it possible for Southern Color Printing Corporation to obtain business without competition to the detriment of the moving parties. Upon the adjourned date of the motion counsel for the moving defendants, without objection upon the part of plaintiff, broadened the motion to include a motion to vacate in its entirety the preliminary injunction upon the same ground more fully supported by evidence developed in the course of depositions taken in support of the motion. Upon the basis of all the proceedings heretofore had herein, including the affidavits, exhibits and testimony which were made a part of the record on plaintiff's original application for a preliminary injunction and the affidavits, exhibits

and testimony which were made a part of the record in connection with the moving defendants' application to vacate or modify the preliminary injunction, the court makes the following supplementary and additional findings of fact and conclusions of law which shall be deemed to supersede the findings of fact and conclusions of law filed on June 22, 1962, insofar as these findings of fact and conclusions of law are inconsistent therewith.

FINDINGS OF FACT

1. The operation of the preliminary injunction has had consequences and effects wholly unintended and unforeseen by the court at the time it was granted. Among other things, it has prevented the opening of the Sylacauga plant, created an unfair competitive advantage for Southern Color Printing Company and has caused and will continue to cause damage to the business of International Color Printing Company.
2. The provisions of the preliminary injunction do not permit the opening and operation of the Sylacauga plant except under conditions that would result in certain and substantial operating losses.
3. The public interest requires that the Sylacauga plant be permitted to open and operate under conditions that will afford an opportunity for it to be operated in open and fair competition in the business of printing color comic supplements in the southeastern area of the United States.
4. The unrestricted operation of the Sylacauga plant by Greater Buffalo Press, Incorporated or its subsidiary Dixie Color Printing Corporation will not cause damage or injury to Southern Color Printing Corporation or Atlantic Features and Printing Company and the continuance of the preliminary injunction is not necessary for the protection of either of these companies or for the maintenance of effective competition in the color comic supplement industry in the southeastern portion of the United States.
5. The unrestricted operation of the Sylacauga plant by Greater Buffalo Press, Incorporated or its subsidiary Dixie Color Printing Corporation will not cause damage or injury to International Color Printing Company and will not diminish its independent ability to operate effectively, efficiently and profitably in the event this court should ultimately decree a

total or partial divestiture of the interest of Greater Buffalo Press, Incorporated in said company.

6. The operation of the restraining order and the preliminary injunction has resulted in a competitive advantage to Southern Color Printing Corporation and Atlantic Features and Printing Company which they have utilized to deprive International Color Printing Company of substantial amounts of business. The continuance of the preliminary injunction without modification and the competitive advantage thus afforded Southern Color Printing Corporation and Atlantic Features and Printing Company will cause irreparable damage to International Color Printing Company.

1110 7. The operation of the restraining order and the preliminary injunction has restricted competition in the sale and printing of color comic supplements in the southeastern part of the United States and has deprived newspaper publishers of the benefits of such competition, including substantial savings in transportation costs.

8. The restraining order and the preliminary injunction have not had the effect of maintaining the competitive status quo but have created a competitive advantage for Southern Color Printing Corporation and Atlantic Features and Printing Company and have prevented not only Greater Buffalo Press, Incorporated and Dixie Color Printing Corporation but also King Features Syndicate Division of the Hearst Corporation and Newspaper Enterprise Association, Inc. from competing effectively for the sale and printing of color comic supplements in the southeastern part of the United States.

9. The provisions of the preliminary injunction preserving the integrity of the physical assets of International Color Printing Company and the independence of its personnel must be retained for the protection of International in the event 1111 divestiture is granted.

CONCLUSIONS OF LAW

1. The changed circumstances found to have occurred since the entry of the preliminary injunction and the unintended and unforeseen result of the operation of such injunction indicate that the broad scope of preliminary relief heretofore granted is not required to prevent irreparable injury to the plaintiff in the event that this court should ultimately decree a divestiture of

the interest of Greater Buffalo Press, Incorporated in International Color Printing Company.

2. A balancing of the interests on the one hand, of the damage and injury found to have resulted from the present operation of the preliminary injunction to the public, the moving parties and to competition within the industry and on the other hand, of the lack of damage which would be occasioned to the plaintiff and the competitors of the moving parties by the modification of the temporary injunction, moves this court in the exercise of its discretion to dissolve in part its preliminary injunction.

3. The continuance of the preliminary injunction, insofar as it affects the personnel and physical assets of International Color Printing Company, is necessary to prevent irreparable damage to the plaintiff in the event this court should ultimately decree divestiture of the interest of Greater Buffalo Press, Incorporated in International Color Printing Company.

IT IS ACCORDINGLY ORDERED that the order of this court dated June 22, 1962, be modified as follows:

(1) Paragraph 1, page 2, is amended to read as follows:

"1. Further consolidating or intermingling any of its physical assets or operating personnel, with those of the defendants, Greater Buffalo Press, Incorporated, Southwest Color Printing Corporation or Dixie Color Printing Corporation, or any other person;"

(2) Paragraph 2, page 2, is amended to read as follows:

"2. Conveying, selling, leasing or transferring in any manner, printing presses, machines, equipment and parts thereof, or any other physical assets of, or in the possession of, or any stock of, the defendant, International Color Printing Company, to the said defendants, or any of them, or to any other person;"

(3) By deleting subparagraphs (d), (e), (f), and (j) of paragraph 4, pages 7 through 10 and 11.

John O. Henderson

JOHN O. HENDERSON

United States District Judge.

Dated: February 19, 1963.

1113 [Caption omitted in printing]

SIRS:

PLEASE TAKE NOTICE that at the trial of this action the plaintiff will move the Court to amend the complaint in

this action, for the purpose of simplifying the issues for trial, by deleting that part of such complaint which charges the defendant Greater Buffalo Press, Incorporated with having monopolized the trade and commerce described therein in violation of Section 2 of the Sherman Act.

Plaintiff will move to delete the following language from the complaint:

1. Page 10, paragraph 24—"and the defendant Greater Buffalo, since about June 1955, has monopolized"
2. Page 13, paragraph 30(d)—"The defendant Greater Buffalo has obtained a monopoly of the printing of color comic supplements in the United States".
3. Page 13, paragraph 1—"and that the defendant Greater Buffalo has monopolized".
4. Page 14, paragraph 5—"and the monopolization of the aforesaid interstate trade."

PLEASE TAKE FURTHER NOTICE that such amendment of the complaint, to be proposed by the plaintiff, will not delete such allegations of the complaint which charge the defendants, Greater Buffalo Press, Incorporated, The Hearst Corporation, and Newspaper Enterprise Association, Inc., with having entered into a conspiracy to monopolize in violation of Section 2 of the Sherman Act.

DATED: November 17, 1964, Washington, D.C.

Elliott H. Feldman

ELLIOTT H. FELDMAN
Attorney for Plaintiff.

TO:

RAICHLE, MOORE, BANNING & WEISS, Esquires,
10 Lafayette Square, Buffalo 3, New York.

1114 BAKER, HOSTETLER & PATTERSON, Esquires,
1956 Union Commerce Building,
Cleveland, 14 Ohio.

GALLOP, GOULD & CLIMENKO, Esquires,
360 Lexington Avenue,
New York City, N.Y.

1115 (Caption omitted in printing)

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of thirty (30) days following the date of filing of this Stipulation without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

2. The plaintiff may withdraw its consent hereto at any time within said period of thirty (30) days by serving notice thereof upon the consenting defendant and filing said notice with the Court;

3. In the event plaintiff withdraws its consent hereto, this Stipulation shall be of no effect whatever in this or any 1116 other proceeding and the making of this Stipulation shall not in any manner prejudice any consenting party in any subsequent proceedings.

Dated: June 16, 1965

For the Plaintiff:

UNITED STATES OF AMERICA

(S) WILLIAM H. ORRICK, Jr.,
Assistant Attorney General

(S) Lewis Bernstein,
LEWIS BERNSTEIN

(S) William D. Kilgore, Jr.,
WILLIAM D. KILGORE, Jr.

(S) JOHN T. CURTIN,
U.S. Attorney

(S) Elliott H. Feldman
ELLIOTT H. FELDMAN,
Attorneys, Department of Justice.

For the Defendant:

THE HEARST CORPORATION

(S) Herbert Brownell
HERBERT BROWNELL

(S) Jesse Climenko
JESSE CLIMENKO

1117 [Caption Omitted in Printing]

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys that:

1. The stipulation entered into on June 16, 1965 is hereby modified to provide that the Final Judgment, in the form attached thereto, may be filed and entered by the Court at any time after July 28, 1965 instead of the time provided in paragraph 1 of the June 16, 1965 stipulation.

2. All other terms and provisions of the June 16, 1965 stipulation remain unchanged..

Dated: July 15, 1965

Washington, D.C.

ELLIOTT H. FELDMAN,
Attorney for Plaintiff.

GALLOP, CLIMENKO & GOULD,

By JESSE CLIMENKO

LORD, DAY & LORD,

By HERBERT BROWNELL,

Attorneys for The Hearst Corporation.

Filed Jul. 21, 1965.

Roland E. Logel, Clerk.

[Caption Omitted in Printing]

STIPULATION

It is hereby stipulated by and between the attorneys for all of the parties to this action that a Final Judgment, a copy of which is annexed hereto, was submitted to the Court for entry on August 16, 1965, upon notice to the attorneys for all of the parties to this action and all of such parties were afforded an opportunity to be heard thereon, with respect to the entry of such Final Judgment.

Dated: August 16, 1965.

For the Plaintiff:

UNITED STATES OF AMERICA

By Lewis Bernstein

LEWIS BERNSTEIN

Attorney, Department of Justice.

1119 For the Defendant:

THE HEARST CORPORATION

GALLOP, GOULD & CLIMENKO

By JESSE CLIMENKO

LORD, DAY AND LORD

By HERBERT BROWNELL

For the Defendant:

NEWSPAPER ENTERPRISE ASSOCIATION, INC.
BAKER, HOSTETLER & PATTERSON
By BOURNE P. DEMPSEY

For the Defendants:

GREATER BUFFALO PRESS, INCORPORATED;
INTERNATIONAL COLOR PRINTING COMPANY;
SOUTHWEST COLOR PRINTING CORPORATION;
and DIXIE COLOR PRINTING CORPORATION
RAICHLE, MOORE, BANNING AND WEISS
By JAMES O. MOORE, Jr.

1120

[Caption Omitted in Printing]

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on January 6, 1961, the defendant, The Hear Corporation, having appeared and filed its answer to the complaint denying the substantive allegations thereof, and the plaintiff and said defendant, by their respective attorneys, having consented to the entry of this Final Judgment before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and without any admission by or estoppel of either party as to any such issue; and this Court having determined that there is no just reason for delay in entering a Final Judgment, except as otherwise provided herein as to all of plaintiff's claims asserted in said complaint against the said defendant; it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complainant states claims for relief against the consenting defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled

1121 "An act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act, and under Section 3 of the Act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended, commonly known as the Clayton Act.

II

As used in this Final Judgment:

(A) "Hearst" shall mean the defendant The Hearst Corporation with its principal place of business at New York City, New York, and as used herein shall include King;

(B) "King" shall mean the King Features Syndicate Division of Hearst, with its principal place of business at New York City, New York;

(C) "Consenting defendant" shall mean the defendant Hearst;

(D) "Person" shall mean any individual, partnership, firm, corporation, association, trustee or other business or legal entity;

(E) "Color comic supplements" shall mean supplements for inclusion in Sunday or Saturday newspapers, printed in color, and usually containing, among other things, copyrighted comic features; and

(F) "Features" shall mean material, whether copyrighted or not, including but not limited to comic strips, which appear in newspaper color supplements.

III

(A) The provisions of this Final Judgment applicable to the consenting defendant shall apply also to its officers, directors, servants, employees, agents, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

(B) The consenting defendant is ordered and directed to take such steps as are necessary to secure compliance by its officials and such other persons, described above, with the terms of this Final Judgment.

IV

The consenting defendant is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, maintaining, or claiming any right under any contract, agreement, arrangement, understanding or plan with any person engaged in the printing,

distribution or sale of color comic supplements for the purpose or with the effect of:

(1) Hindering, restricting, limiting or preventing any person from engaging in the business of printing color comic supplements;

(2) Hindering, restricting, limiting or preventing any person from selling color comic supplements;

(3) Allocating or dividing customers, territories or markets for the printing or sale of color comic supplements;

(4) Fixing, determining or maintaining prices or any other terms or conditions for the sale of color comic supplements to any third person.

(B) Entering into any license for any individual feature or grouping of features, or fixing a fee charged therefor, or discounting from, or giving rebate upon, such fee, on the condition, agreement or understanding that the licensee shall not purchase color comic supplements from a printer other than one selected, designated or represented by the consenting defendant; provided, however, that combining a fee for the license and a price for printing shall not be deemed to be a violation of this subsection (B), but shall be subject to subsection (C) following;

(C) Entering into or renewing, adhering to, maintaining or claiming any right under any arrangement with any newspaper, for the sale of color comic supplements which include

any feature licensed by such consenting defendant, unless
1123 such arrangement is reduced to writing and (a) separately provides for or lists the fee for licensing such feature and the price for the printing of the supplements, and (b) provides that such license may at the option of the newspaper remain in effect at the same price for at least three (3) months following the expiration of the contract for the sale of the supplements. Provided, however, that this subsection (C) shall become effective only if, as and when a plant for printing purposes may have been divested pursuant to a Final Judgment entered in this action.

V

(A) Upon entry of this Final Judgment the plaintiff shall be permitted to use such discovery procedures with respect to the consenting defendant as it is entitled to use under Rules 26 through 37 of the Federal Rules of Civil Procedure as to the non-consenting defendants.

(B) Notwithstanding the making and entry of this Final Judgment the plaintiff may, if the Court adjudicates that the defendant Greater Buffalo Press has violated any of the anti-trust laws as charged in the complaint filed herein, seek and the Court may order such other relief as to the consenting defendant as the Court may deem necessary and appropriate to dissipate the effects of the unlawful activities that may be found by the Court and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements; provided, however, that the plaintiff in said application for such further relief does not seek an adjudication that the consenting defendant has violated any of the antitrust laws as charged in the said complaint. On any hearing with respect to such other relief the consenting defendant shall have the right to be heard on any issues relevant to a fair judicial inquiry.

(C) The plaintiff will not seek any divestiture relief in this action in the event a Final Judgment may have been entered in its favor, unless it has given notice of such application to the consenting defendant and all other parties to this action, and has afforded them the opportunity to be heard by the

Court.

1124

VI

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the consenting defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant which relate to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview its officers and employees, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the consenting defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as may from time to time be necessary for determining or securing compliance with this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any employee of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: August 31, 1965.

(S) JOHN O. HENDERSON,
United States District Judge.

1125

[Caption Omitted in Printing]

Trial of above entitled action held before the Hon. JOHN O. HENDERSON, United States District Judge for the Western District of New York, commencing on Tuesday, October 12, 1965, at 10 A.M., at Buffalo, New York.

Appearances: *Lewis Bernstein, Esq.* and *Elliott H. Feldman, Esq.* Department of Justice, Antitrust Division, appearing on behalf of the Plaintiff.

Messrs. Raichle, Moore, Banning & Weiss, by *Frank G. Raichle, Esq.* and *James O. Moore, Jr., Esq.*, Appearing on behalf of the defendant *Greater Buffalo Press*.

Messrs. Baker, Hostetler & Patterson, by *Richard F. Stevens, Esq.*, and *Bourne P. Dempsey, Esq.*, appearing on

behalf of the defendant *Newspaper Enterprise Association, Inc.*

* * * * *

1126 (Government's Exhibits P-1 through 69 marked for identification prior to trial.)

The COURT: Gentlemen. Mr. Bernstein?

Mr. BERNSTEIN: The plaintiff is ready, Your Honor.

Mr. RAICHLE: Ready.

Mr. STEVENS: Ready.

The COURT: I have not had time to explore with you the order of proof that you expect, except I know that a number of exhibits have been marked. I would like to know whether we are going to take any live testimony today or not?

Mr. BERNSTEIN: We expect to take one witness today. My best estimate would be no more than a half hour and I expect to do that relatively soon in the proceeding. Perhaps we may reach it before the morning break, or, if not, the first thing after the recess.

The COURT: Then what is the order of proof you expect to make?

Mr. BERNSTEIN: May it please the Court: I would like to present a statement of the facts that the Government proposes to prove in the order in which it will be proved, and submit to Your Honor an outline of the topical proof that the Government will offer. Then at the conclusion of this statement, if it meets with the Court's approval, the Government will introduce into evidence various documents and portions of a deposition, and then produce this one witness to identify the business records practice of certain documents we were not able to get stipulated, and continue on in that fashion.

The COURT: All right.

Mr. BERNSTEIN: The plaintiff will prove that in or about January 1954, Greater Buffalo and King were competitors for the sale of printed color comic supplements; that in or about that time the two of them agreed to eliminate competition of two newspaper accounts, consisting of three newspapers, 1128 and then a short time later agreed to eliminate competition between them by respecting each others existing competitors. In the meantime—

Mr. RAICHLE: Did you mean competitors or customers?

Mr. BERNSTEIN: Respecting each others respective customers. In the meantime, both King and Greater Buffalo were potential competitors for newspaper accounts in the South and Southwest. Each, independently, were proceeding with a plan to establish a printing plant in the South. Greater Buffalo was giving serious consideration to establishing a plant in Lufkin, Texas; and King was giving serious consideration to have International establish a plant in Sylacauga, Alabama.

At or about this time, having agreed to respect each others customers, then Greater Buffalo and King agreed to eliminate all competition between them, under an arrangement 1129 whereby King would be the sole sales agent for the comic supplements and Greater Buffalo would concentrate on the printing only of the colored comic supplements and also as part of this arrangement was to do the printing of the supplements sold by King that theretofore had been done by International by acquiring the stock of International.

So, in accordance with this arrangement, on June 25, 1955, Greater Buffalo purchased International with King's approval and without which the sale might have been impeded. In or about November, a few months after this acquisition; without King's knowledge—although Greater Buffalo and King had the understanding that King would be the sole and exclusive sales agent for Greater Buffalo printing—without King's knowledge, Greater Buffalo brought NEA into the picture and made an arrangement whereby NEA would also be sales agent for color comic supplements printed by Greater Buffalo, 1130 and it made this deal with NEA whereby NEA, which at that time was having its color comic supplements printed by its own subsidiary, Buffalo Color Press, it made arrangements to acquire the printing facilities of Buffalo Color Press and do the printing for NEA, and thereby signed a contract with them whereby it eliminated competition with NEA for the printing of the color comic supplements by agreeing in a written contract that for those customers that NEA was then printing and selling color comic supplements to, Greater Buffalo would do the printing and would give NEA perpetually a royalty on those accounts. It also agreed with NEA, insofar as any new business was concerned—by "new business" they meant a newspaper which did its own printing, printed its own

color comic supplements, and then decided to have an outside printer then do it—that with respect to any new business 1131 printed by Greater Buffalo, NEA was to get a commission on all new business it brought in and they agreed they were going to arrange to allocate which customers were to be whose; whose were to be NEA's, whose were to be Greater Buffalo's.

Now, King had no knowledge of this at the initiation of this arrangement, but it soon found out about it, found out about it by an invitation of the president of Greater Buffalo to King to meet with NEA representatives in a hotel in New York City, and there at that meeting, King and NEA agreed that the two of them would not compete against each other for the sale of color comic supplements.

These are the Government's contentions with respect to this conduct that I have just outlined to the Court. The Government contends that at the time that Greater Buffalo 1132 made its arrangement with NEA to buy Buffalo Color Press and do the printing for NEA, the Government contends Greater Buffalo and King at that point of time had already been engaged in a conspiracy to refrain from soliciting each other's business and to maintain and stabilize prices, which was in violation of Section 1 of the Sherman Act.

The Government contends that NEA joined this conspiracy by its deal with Greater Buffalo and later with King, because at that time it had such information that would charge it with knowledge that King and Greater Buffalo was then engaged in a conspiracy to refrain from competing with each other and to maintain and stabilize prices. Now, the Government contends these are the facts; that NEA knew—which the Government charges it with knowledge—King and Greater Buffalo 1133 must have been engaged in a conspiracy at that time. It knew Greater Buffalo planned to proceed with its Lufkin Plant; it knew Greater Buffalo couldn't proceed with the Lufkin Plant without an assured volume of business down there. It had heard that King and Greater Buffalo had a deal. It knew Greater Buffalo couldn't buy International out and become King's exclusive printer at International without King's acquiescence. The Government contends that knowing these things, it must have known that King and Greater Buffalo had a no-compete arrangement at the time it made its deal with

King not to compete with it for any supplements, color comic supplements.

Greater Buffalo's acquisition of International increased its share of the market for printing for newspapers which didn't print its own color comic supplement from a minimum 1134 of thirty-one percent to sixty-three percent. The Government contends this acquisition, in and of itself, violated Section 7 of the Clayton Act; and since that acquisition was part of a conspiracy between King and Greater Buffalo, which had later been joined by NEA, at the same time it also constituted, among Greater Buffalo, NEA, and King, a conspiracy to monopolize for Greater Buffalo the printing of color comic supplements and the sale of printed color comic supplements through Greater Buffalo, NEA and King.

In its proof the Government will show that, as a consequence of this conspiracy, competition with another color comic printer, Eastern, had been eliminated; and further, that newspapers were misled into believing that competition actually existed between Greater Buffalo, King and NEA, whereas, this 1135 was in effect a sham upon them; actually there was no competition. They were led to believe by Greater Buffalo, King and NEA that there was competition.

That constitutes the Government's case, Your Honor. For the Court's convenience, I will hand up the Government's outline of proof, and listed there are eighteen topics, and the evidence that the Government will introduce and will fit under the category of these topics in this order.

If I may, at this time I will proceed to the proof on the first topic, which is proof to show that Greater Buffalo and King were competitors in the sale of color comic supplements to newspapers prior to their arrangement not to compete in 1954.

The COURT: What you have just said, Mr. Bernstein, is in the nature of an opening here, and it may be that the other parties would like to respond in an opening of some 1136 fashion. I invite them to do so. Of course, they are not compelled to. Is there any desire to do that now?

Mr. RAICHLE: I would like to make one or two observations, if Your Honor please. I had intended not to make an opening because I conceived that Your Honor was so familiar with this case as a result of the proceedings had and taken before you from time to time over the years during which it has been pending. But in view of counsel's opening, I feel called upon to make

these observations. Number one—and I think important—is the fact that his contentions as now made are not only at complete variance with the allegations of his Complaint, the theory of his case to date, they are in many instances in direct conflict with the allegations of the Complaint and the positions which counsel has taken from time to time before Your Honor.

1137 Be that as it may, it will develop and be apparent to Your Honor, I foresee, during the course of the trial. At the outset, I would like to call your attention to the fact, though it be an indulgence in the obvious—that this is not a case to impose a penalty for past wrongs; it is not a case to recover damages or inflict punishment upon the defendant; it is a case in equity, where the equitable powers of the Court are invoked to grant relief, dictated by the competitive situation or the business conditions or the circumstances presently prevailing.

Now, the talk about a flirtation in 1954, in 1955; ten, eleven, twelve years ago; initiated by the only predator so alleged to be in this case—King Features or Hearst—and the talk about alleged agreements in 1954, which the proof will show were never carried out, long since dissipated even as far as the 1138 negotiations concerning them are involved. It is not pertinent to what is to be decided by Your Honor, I submit.

Now, it will appear, of course, that King, which by the way had created this industry, if such it be, in which it had at one time a complete monopoly except for the printing of color comic supplements by newspapers themselves; King had the features, King tied, according to the original claims of the Government, the sale of features with the sale of printing, but, in any event, little Buffalo Press, from humble beginnings, due to the industry, the hard work and the dedication of its owners, began to eat into the King Features or the Hearst monopoly, and then in the course of events, the other defendant, NEA, Newspaper Enterprise Association, came along and there was additional competition for King. Of course, King didn't 1139 like this, and you will find running through the case the thread of a dominance by King, and there is a resentment of the ascendancy of Greater Buffalo and of the competition of NEA, and there will be, I frankly say, some documents and maybe some other proof that there were these maneuvers, largely fostered by the absent defendant, who has consented

himself out of the trial of this case, King I mean. But the proof will show there was competition before the flirtation, competition after it; that Greater Buffalo abjured by the law has competed, has competed effectively in certain instances with King and Hearst, and has competed effectively in certain instances with NEA, and that competition, rife, spirited, wholesome and effective has taken place over the years and is now taking place in this industry.

1140 The matter of some musings, introspective and retrospective thoughts on the part of Hearst representatives, I assume, are to be offered through the medium of these documents, to try to show that somewhere, somehow, there was some arrangement that bound these defendants which I think Your Honor will find never existed, was never honored. Above and beyond everything else; no one has been, no one is being, and in the foreseeable future no one will be injured by anything which the Government can prove.

Now, the events which he stresses—when I say "he," I mean my learned adversary—are events that took place long ago; 1954 as he says; 1955, as he says; 1956 and 1957 some of the documents might tend to indicate. But the pertinent inquiry is, what is the prevailing set of circumstances now? What is

there in the circumstances that calls for the drastic
1141 remedies which he seeks? Your Honor has found, after careful reflection upon a rather complete record, that this is an industry to which anyone has easy access; anyone without great means and without considerable know-how can enter. Those who choose to, can and may. Any newspaper can print its own comics, comic supplements. It is preposterous to claim, with all the capacity aggregated among the newspapers in this country to print these things themselves, that it could be thought that little Greater Buffalo could achieve a monopoly. Your Honor is well aware, I am sure, of the findings he has made in this regard. There will be, I venture to say, no proof of any attempt to monopolize. It would be preposterous to undertake to do so. Of importance like the straws that show

the way the wind is blowing, is the fact that after our
1142 last pre-trial conference—or during the course of our pre-trial conference, more accurately stated—counsel withdrew the monopoly charge. For years he charged that we had monopolized. On what seemed to be the eve of trial, he amended his Complaint and withdrew the charge of monopoliz-

zation. Before Your Honor, on the motion on our part to relax and, indeed, vacate the preliminary injunction, the song seemed to be that unless something was done in behalf of Hearst, some protection was accorded Hearst, Greater Buffalo was going to take some of Hearst's business away from them. Now, he says we had an agreement not to compete. At that time he was claiming that we were competing so effectively that we were taking the business away from them. He has shifted, he has changed, he has been inconsistent in all his claims, and today

for the first time he comes forward with another theory
1143 of action.

I go to something else, Your Honor. I foresee some difficulty for Your Honor to resolve this. Counsel's case is purported to be made for the most part through the medium of documents. He talks about the business record rule; he talks about the shopbook rule; he talks about the declarations of co-conspirators and all those things with which Your Honor is generally familiar. But from my preparation of the case, I foresee a great difficulty. I would make some request, just as he does, the documents which have been marked and assigned by him as those upon which he relies, are apparently to be offered in no chronological sequence, if he follows the marking of the documents. A document comes in dated 1954, 1955; then one

comes in dated 1958 or 1959 and we are back again to
1144 1957, and it is a very hard case to follow, if indeed he follows—to use the word again—the order of proof, which is indicated by the number on the documents. But more importantly and of substance is the fact that most every document I have seen allegedly taken from the files of the absent defendant, Hearst, who has consented itself out of the trial—again I repeat, the only one charged with predatory practices—every document taken from the files of that defendant, which I have seen, which he purposed to offer, is a document which I conceive to be inadmissible under familiar rules of law.

In the first place, he relies, and indicates that he relies, upon the basic proposition that the declarations of one conspirator are binding upon others. That is only so after there is clear and independent proof of the fact of the conspiracy. We
1145 must not, during the course of this trial, lose sight of the fact that the declarations of a conspirator, an alleged conspirator, is admissible only if first there be independent, legal and competent evidence upon which a preliminary

finding of a conspiracy could be made. Secondly, that the statement, written or oral, is a statement made in the course of the conspiracy and to effect the objects thereof. But, in addition to that, as the Court said, the so-called shopbook rule, the so-called business record rule, means what it says, and that it does not extend to hearsay and gossip, and there must be the basic proof which brings it within the rule; and I am afraid, as these documents are offered one by one, we must argue and Your Honor must rule, in many instances and specifically with respect to each document, as to whether it comes within the rules.

We have tried to find in our minds a manner of whole-
1146 sailing; it can't be done, Your Honor. The most shocking claims are made; that communications between employees of our competitors—as I choose to call them—should be binding upon us, and there is the problem with respect to each document as to whether it is admissible. I do say to Your Honor, in good faith, our objections are to be pressed. We cannot organize our side of the case until we know and have learned from Your Honor's rulings which of these documents are admissible and which are to be received, and which are not. I make the general claim, without fear of misrepresenting it, that this case must fail in large measure due to the inadmissibility of the documents which my friend seeks to offer in support of his case.

The COURT: Mr. Stevens?

Mr. STEVENS: If it please the Court; on behalf of Newspaper Enterprise Association, Incorporated, I adopt what Mr.
1147 Raichle has said generally and wish to point out specifically, as to my client, the very outline of the alleged connection of NEA with the alleged conspiracy is tenuous to the nth degree. For example, Mr. Bernstein did not say that we, proof positive, knew of the existence of a conspiracy at the time we made a contract with Greater Buffalo Press and at the time Buffalo Color Press was sold to Greater Buffalo Press. He says that we must have known. Why? Because we were aware from what our representatives heard throughout the country that Greater Buffalo Press was contemplating a printing facility in Texas, and we must have deduced from that fact that there would have to be a very substantial volume of printing available in Texas and, of course, by the vassal association of one idea with another, which is characteristic in this case,

1148 I submit, somehow we were to have believed and to have known that there was not merely a business association, but a conspiracy to fix prices, to allocate markets, existing between Hearst, which was by far the largest percentage factor in color comic supplement business, and Greater Buffalo Press, which was, I believe, second to it, and we, NEA, had four to five or possibly six percent of the entire business. The second, and the startling fact pattern from which we were supposed to have deduced there had to be not a normal business relationship but a conspiracy, which if the gentlemen on the opposition were correct, was the basis or properly the basis of a criminal charge, that that existed because Greater Buffalo Press bought International Color Company in Wilkes-Barre, and because it was known in the business that International printed for Hearst. Again, we were supposed to have added up these series of items and come to the conclusion that there must be an unlawful arrangement between Greater Buffalo Press and Hearst, and that we'd better get into the tent so that we can share in it. I respectfully submit, on the very face of the statement of counsel, there is, as I have said, only the most tenuous case portrayed against NEA.

Now, Your Honor, the proof—I don't wish to go into it extensively; like Mr. Raichle, I thought we might defer it until a resumption of the defense for such a statement—the proof will show that this heinous event we were supposed to have committed when we sold Buffalo Color Press, which was a subsidiary of NEA, to Greater Buffalo Press, arose in a fact pattern in which Buffalo Color Press was losing money, 1150 losing money substantially, and I believe the facts will show that we had an analysis made that it would have taken an expenditure of something like one million dollars to have put the ancient equipment in use at Buffalo Color Press on a basis anything like competitive with Greater Buffalo Press. Furthermore, Your Honor, there was talk about the fact that there was a reserve commission. The truth of the matter is, Your Honor, that on the accounts which Greater Buffalo acquired at the time the sale was made in October of 1955, of Buffalo Color Press to Greater Buffalo Press, those accounts had been served and serviced by NEA, and they continued to be served and serviced by NEA. This isn't a gratuity, it is a quid pro quo, for work done. The people who contacted the

customer, as I understand it, are NEA people and it is a continuing service which they render. Now like Mr. Raichle,

1151 I draw the Court's attention to the fact that this is an equity case and we are today considering what relief is in the scope of the power of this Court, in its discretion, to grant the Government, assuming it can develop facts which warrant the granting of any relief.

The proof, Your Honor, will show that, in order to clarify the record, any notion that there was a restraint upon NEA personally from openly going after Color comic supplement business whenever and wherever it was available in 1958—which is now seven full years ago, and a year and a half at least, I believe, prior to the institution of this proceeding—NEA, through its sales manager, vice-president in charge of Sales, sent a bulletin to all of its salesmen stating that they should go after color comic supplement printing business wherever and whenever it could be found. So that when we come to consider

1152 the position of NEA in this proceeding we find there is only the thinnest possible threat of connection, by Mr. Bernstein's own words, not a direct charge, but things which he can deduce and believe the Court should add up to a finding of guilt, to place us in a conspiracy. We will find there were the broadest and most substantial business reasons for the disposition of Buffalo Color Press to Greater Buffalo Press at the time it was sold because of its losing position and because of the tremendous expenditure it would have taken to put it into a competitive position. We will find that, although there was talk, as a small factor in this business, and naturally NEA wanted to find out what the big boy, King, was doing, and wanted to forestall its efforts—and the documents will be replete if they are admitted, which to me is questionable,

1153 will be replete with notions that the head of the King

Feature comic color supplement business wanted to exterminate any position of NEA in this business. When we show that we have actually and overtly instructed our salesmen to desist from any notion there was to be any limitation upon competition and actively undertake to sell wherever and whenever they can, we respectfully submit that NEA should be discharged from this proceeding.

On the subject of the evidence, I subscribe heartily to what Mr. Raichle has said. The Government has indicated to us that there are some twenty-nine documents, Your Honor, which it

hopes to submit and have accepted under the business record statute, which I think Your Honor is familiar with. Out of those documents, no less than nineteen are from the files of

King Features. Many of them are merely the introspective musings of a man who wrote memoranda to himself before he attended a meeting and then compounded the felony by duplicating the effort afterwards, apparently for his sole consumption. Others are purely in the category of inter-office memoranda.

The COURT: Who is that man you mentioned?

Mr. STEVENS: Frank J. Nicht, who has passed away since this proceeding was instituted. I cite the King documents, which are offered, I expect will be offered, under the shopbook rule, because they are to me glaring examples of misapplication and improper invocation of that statute, and we certainly will have to address ourselves, I respectfully submit, to each document as they come up.

The COURT: What do you consider Nicht's musings to be; a diary that he kept in his business records, or what?

Mr. STEVENS: I think, your honor, they were statements to himself, as he tried to ingest and digest what he thought he heard and saw, and to prognosticate from them. They are highly introspective. They indicate that he was literally thinking out loud to himself. One of the documents, for example, ends in a series of questions, not quite like the nothingness of what, but something similar.

The COURT: All right. Is there anything further?

Mr. RAICHLE: No.

Mr. STEVENS: No.

The COURT: One thing that I have been given, I think yesterday, is a memorandum on this business record rule and concerning expected documents, and which gave me an indication there was going to be a tussle over these records, and now it is confirmed by Mr. Raichle's statements and Mr. Stevens. I don't know whether you have had a copy of that?

Mr. BERNSTEIN: No.

Mr. MOORE: I have got one here.

The COURT: This is going to be a crucial part and we want to do the best we can to be sound. I have certain views on it, particularly if the proof bears out what you say about these musings in somebody else's files. I would like to have the Government's position when you make these offers,

legally back them up. One of the leading cases that counsel talked to me about is Standard Oil against Moore, 251 Fed. 2nd, 188, and they cite the Central Railroad against Sotnik, 258 Fed. 2nd, 85. Now, I assume that you might well imagine that you are going to have trouble over this question and are ready to face up to it now. I don't think it comes as a surprise, does it?

Mr. BERNSTEIN: It does not come as a surprise that objection was made to the introduction. We did not receive a copy of the memorandum.

The COURT: I wanted you to be in shape.

Mr. RAICHLE: It wasn't prepared until late yesterday, it cites two cases.

1157 The COURT: I wanted to be sure that there wasn't any feeling that had prevailed that these things were going to come swimming on in.

Mr. BERNSTEIN: Not on my part, Your Honor.

Mr. RAICHLE: May the record show we have given him a copy of the memorandum. I think we should have given it to you yesterday. I am sorry.

Mr. BERNSTEIN: Now, if the Court please, the Government has arranged its proof topically, rather than chronologically, and with all due respect to counsel, there is some order in our presentation. And the Court might be interested in knowing that we have given defense counsel a cross index of the Government exhibits for identification with the document numbers that had been used in the pre-trial preparation of this case, so that in general, they have the order of proof of the documents and the cross index to it. The first item relates to Topic

1158 1, to show that Greater Buffalo Press and King Features were competitors in the sale of color comic supplements to newspapers prior to their arrangement not to compete in 1954. It has been stipulated between the parties in a stipulation dated September 24, 1965, in paragraph 7-----

Mr. STEVENS: Just a moment, please? Seven?

Mr. BERNSTEIN: Prior to June 1955, Greater Buffalo's competitors in the sale of color comic supplements to newspapers included King and NEA, as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955. I now offer in evidence from the deposition of the Hearst Corporation, by Frank J. Nicht, a Director of the Hearst Corporation, and Vice-President and General Sales Manager of the

King Features Syndicate Division of the Hearst Corporation,
 taken by the plaintiff pursuant to notice, dated at
 1159 Buffalo, New York, March 3, 1961, at the Federal Court-
 house, Room 609, Foley Square, New York 7, New York,
 on March 20, 1961, at 10:30 a.m., before Albert R. Sparks, a
 Certified Shorthand Reporter and Notary Public of the State
 of New York. Frank J. Nicht, the deponent, is now deceased;
 he died in 1964. I offer in evidence at page 26, the following
 portions—

Mr. RAICHLE: Page 26?

Mr. BERNSTEIN: Line 12, during the direct examination of
 Mr. Nicht:

"Q. Going back to 1954, which of the companies listed by
 you did you consider to be your leading or keenest competitors?"

"A. Greater Buffalo.

"Q. Going down the line as far as competition was concerned,
 who would follow?"

"A. NEA."

Then going to—

Mr. RAICHLE: Read the rest of it.

Mr. BERNSTEIN: Not at this time unless—

1160 Mr. RAICHLE: I submit, if Your Honor please, with
 an apology for interrupting counsel, this is an excellent
 example of this practice of wresting a question and answer out
 of context without reading that which directly relates to it.

The COURT: Now, I will require you, Mr. Bernstein, to read
 the full answer that has any bearing on the comments made, or
 if you choose not to, give counsel the privilege of interrupting,
 as he has, to read it now. I am not going to be hopping back and
 forth through a multitude of things here. I don't want to have
 to be looking at a brief that says "when Mr. Bernstein read that
 on opening day, two days later there was another portion read
 that has a mellowing affect on it." Let us be practical and
 either you read it—you may not be presently aware of what Mr.
 Raichle wants read—but if he asks you to read on, then I wish
 you would do so or I will give him the privilege of
 1161 doing so.

Mr. BERNSTEIN: I will be happy to if he will indicate
 which portion.

Mr. RAICHLE: Just the rest of the page.

The COURT: You read on and if that point is reached and
 you are happy with it—

Mr. RAICHE: Just the rest of the page.

"Q. After NEA?

"A. I mentioned those before—Chicago Tribune, United Features, Eastern Color. That is about it.

"Q. When you mention the Chicago Tribune, in other words in 1954 you considered the Chicago Tribune to be a competitor of King Features?

"A. Yes, sir."

Mr. RAICHE: That does it.

Mr. BERNSTEIN: Now, I might state at this time, so that there is no misunderstanding amongst us, the Government is not trying to take any unfair advantage—

The COURT: I don't have any such idea.

Mr. BERNSTEIN: The Government is trying to focus its attention on these topics. Quite true, the answers during 1162 a deposition, when we are trying to develop a point, you take many avenues which are—which may not develop.

The COURT: I haven't any impression that you are giving us less than what you consider the pertinent facts are; except, if counsel feels particularly in these depositions, there is a pertinent fact inadvertently overlooked by you, I want it there now, not two days from now.

Mr. BERNSTEIN: Very well, Your Honor. Page 8, the same deposition, line 9—

Mr. STEVENS: Just a moment, please.

Mr. BERNSTEIN:

"Q. What business, Mr. Nicht, is the King Features Syndicate engaged in?

"A. It's engaged in what is known as newspaper syndication. We produce and sell comics, columns, and miscellaneous features for newspaper publication.

"Q. When you say you produce comics and columns, 1163 do you refer to the actual printing of paper, or are you referring to the subject matter or so-called features?

"A. Subject matter.

"Q. In regard to the actual print, or newspaper itself, does the King Features Syndicate sell such supplements?

"A. Yes, sir.

"Q. You used a little while back the word 'syndicated.' What, generally, does the word 'syndicate' mean in your business?

"A. It means just what it does in our instance. We produce and sell features for newspaper publication.

"Q. You mentioned a moment ago, I believe, that the King Features Syndicate sells color comic supplements. Is that correct, sir?"

"A. That's right, sir."

I propose to skip to page 120.

Mr. RAICHLE: Again, we would like the rest of that page.

Mr. BERNSTEIN:

"Q. Is there any other newspaper syndicate, to your knowledge, which also engages in the sale of color comic supplements?"

1164 "A. Yes, sir.

"Q. What syndicate is that, sir?

"A. You mean syndicate or company?

"Q. I am referring to syndicate now.

"A. NEA, Newspaper Enterprise Association.

"Q. Are there any other syndicates which come to your mind?"

"A. United Features, I believe.

"Q. Any others which come to your mind?

"A. Chicago Tribune News Syndicate.

"Q. Any others?

"A. I can't think of them."

I now go to page 10, line 12—

Mr. STEVENS: I think if you are going to read that, you ought to read this intervening portion because it has to do with relative size.

Mr. BERNSTEIN: Line 2:

"A. I don't know. Are you referring just to the ones you have mentioned?"

"Q. That is right, sir.

"A. Including King?

"Q. Including King.

"A. I would say King had the greatest.

1165 "Q. Would you have any idea who would follow King?"

"A. NEA.

"Q. Who would follow NEA?

"A. Either Chicago Tribune or United Features.

"Q. In referring to the fact that King Features Syndicate sells color comic supplements, does King Features actually do the printing or does it purchase such color comic supplements from color printers?"

"A. We make arrangements with color printers.

"Q. After making such arrangements, does King Features Syndicate contract or make arrangements to sell such supplements to newspapers?

"A. Yes, sir."

I now propose to skip to page 23—strike it out. I will discontinue reading from the deposition at this time and now proceed to Topic No. 2, which is evidence designed and offered for the purpose of establishing that International Color Printing printed exclusively for King and, unlike Greater Buffalo,

1166 did not contract with newspapers for the sale of color comic supplements it printed. It has been—

The COURT: This is before the acquisition, you mean?

Mr. BERNSTEIN: That is correct.

The COURT: The acquisition by Greater Buffalo?

Mr. BERNSTEIN: That is correct.

The COURT: All right.

Mr. BERNSTEIN: It has been stipulated in a stipulation dated September 24, 1965, at paragraph 2: "Prior to June 1955, International was a printer of color comic supplements and maintained a printing plant at Wilkes-Barre, Pennsylvania. It also maintained a printing plant at Peoria, Illinois, until some time after June 1955." Paragraph 3: "International, from 1927 to June 1955, printed color comic supplements exclusively for King." Now, with respect to Government's Exhibit 1, marked for identification—Exhibit P-1—

The COURT: Just jog my memory; what is your contention with respect to the ownership of the stock of International prior to the purchase by Greater Buffalo; who controlled it, in your theory?

1167 Mr. BERNSTEIN: Prior to its acquisition by Greater Buffalo Press the stock was owned almost entirely by individual members of a family known as the Govine family, G-o-v-i-n-e.

The COURT: It is not your contention that King controlled that stock at any point?

Mr. BERNSTEIN: No, Your Honor. It is the Government's contention that International printed exclusively for King.

The COURT: I know that. When you made your opening I got the impression one of your present arguments was that one set of people were going to print by arrangement; another was going to sell —

Mr. BERNSTEIN: That is correct.

The COURT: By arrangement, illegal arrangement?

Mr. BERNSTEIN: That is correct.

The COURT: I wondered—I couldn't remember—how King was supposed to be controlling International whereby
1168 International got in the hands of Greater Buffalo.

Mr. BERNSTEIN: The Government's contention is, and the evidence will develop, that King had such an arrangement with International, even though it didn't own the stock, that International was pretty much beholden to King; King could, if it wished, by contractual arrangement and business arrangements, control the course of International's existence.

The COURT: I wondered if they had direct, positive control—

Mr. BERNSTEIN: They did not.

The COURT: If it were true, what you contend, they could snap their fingers and get that in the hands of the printer and leave them the sales. I have it now.

Mr. BERNSTEIN: Now, with respect to Government's Exhibit P-1 marked for identification, Your Honor, and Exhibit P-2 for identification and Exhibit P-3 for identification, Exhibit P-4 for identification—

1169 Mr. RAICHLE: Are you skipping P-3?

Mr. BERNSTEIN: No, sir.

Mr. RAICHLE: I beg your pardon.

Mr. BERNSTEIN: Exhibit P-5 for identification, and Exhibit P-6 for identification, constitute contracts—Exhibits P-2 through P-6 constitute contracts between, or purport to be contracts between King Features and International Color Printing. Exhibit P-1 is a letter dated May 14, 1956, which is after the date when International Color Printing Company stock was acquired by Greater Buffalo; a letter prepared by International Color Printing, signed by Joseph J. Gorman, President and General Manager, addressed to Mr. Robert Wilkerson, Equitable Life Assurance Society, dated May 14, 1956. The Government offers all of these documents in evidence.

Mr. RAICHLE: Could we be guided as to what you
1170 claim from the documents? I don't want to make any general or captious objections, but let me point out the difficulty we have in this, and, I think, Your Honor might have. Exhibit 3, for example, is dated October 21, 1932. The alleged conspiracy—I might say any one of the alleged conspiracies, because they seem to be different ones from time to time—

are claimed to have commenced in or about the year 1954 or 1955. Exhibit 6 is back in June of 1940. I don't want to fail to object to something that is relevant and material but incompetent; on the other hand, if there is some limited purpose, if it is offered for some purpose that is innocuous or proper, I don't see what he is trying to prove by these documents.

Mr. BERNSTEIN: Might I suggest, Your Honor, as an order of procedure, because necessarily antitrust cases are like putting a mosaic together, each part in and of itself is not 1171 of earth-shaking significance, but when the entire mosaic is pieced together, you see it. Might I suggest this as a procedure that will save time and yet preserve the defendant's rights to make timely objections. The Government proposes to read portions of these documents, which it considers significant, and I would suggest, Your Honor, the same rule as the Court had before, if the defendant wishes other portions of the document read, we will be glad that you do it. If the defendant is given the right after the portions are read, so that the Court has the opportunities to see the relevancy, and the defendants, themselves, rather than a speech by counsel as to what is claimed by this document, then the defendant would have the chance to object to its receipt in evidence or being stricken from evidence and it be given no weight.

The COURT: That seems practical, Mr. Raichle. It could be if this thing gets as close as it might be on the admissibility, I would want to reserve decision and ponder those things. We have a record here. If I decide that you prevail, if you are right, we will strike it and not consider it in evidence.

Mr. RAICHLE: That is the old story of the hot poker, when the man objects, they take it away.

The COURT: You haven't a jury here. I think I can manage to listen to these things. I am going to read them anyway to see whether they are proper, relevant and material here, and I think I have reached the point where I may be able to read the record and make a decision based on competent evidence. We will follow that procedure. In other words, you are making an offer of proof here, basically, and there is going to be an objection to the offer. I may rule on it immediately; I may reserve decision.

Mr. RAICHLE: Then he isn't offering the whole document, he is only offering the part he is going to read.

The COURT: No. He said in the interest of continuity and justice, if you have an addition you wish read, he would read them. You are offering the whole document in evidence?

Mr. BERNSTEIN: That is correct.

The COURT: You are stressing parts?

Mr. BERNSTEIN: That is correct.

Mr. RAICHLE: He puts the burden on us to point out our objection to the whole document.

The COURT: The whole document is offered in evidence. He is going to read parts of it, I take it. If you wish to have the parts that you think are essential to you read, he will read that balance. The whole thing is in evidence, offered in evidence.

Mr. RAICHLE: Then we would be required to make any objection that we would feel must be made to parts of the document other than those which he reads. That put a terrific burden on us.

1174 The COURT: That is always a problem. That was your intention?

Mr. BERNSTEIN: Yes.

The COURT: Offer it all?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: We may have to limp along. I appreciate you have the right to examine these, to make decisions on whether you are going to object to them. I am going to give you all the time you need to do that. I may have to take some time myself before I pass on these that are going to be disputed vigorously.

Mr. RAICHLE: We are trying to be as liberal as the rights of our clients would permit. We are not going to make captious objections. But it would help if he said, "I offer this to show there was competition, to show there wasn't competition," it might be on an entirely different phase of the case, for instance, some statistic.

The COURT: That suggestion would be helpful. You 1175 combed these documents out of many, many, I am sure, and you have a purpose; so why don't you say you are offering it specifically toward a certain line or generally toward a certain line?

Mr. BERNSTEIN: Well, the difficulty with that, Your Honor, is that some of these documents, in order to make the case intelligible to the Court and make the record clear and not get bogged up in a morass of detail, in order to see where we are going, some of these documents are going to be offered at this

time for one purpose, and later on under another topic and paragraph would be offered for another purpose. Might I suggest, Your Honor, and I think the defendant's rights have to be preserved, the Government will stipulate there is a standing objection to competency with respect to each document on the

part of the defendants, so that its rights are preserved.

1176 The Government offers all of these documents that it is offering in evidence as an offer of proof in the event they are rejected so that the material is before the Court in any event, and the Government will state the basis upon which it considers this document competent. It considers this document competent on the grounds that at the time it was written, the President, Joseph J. Gorman, President of International Color Printing Company, was the President of a corporation, the sole stock ownership of which was under the control of the defendant, Greater Buffalo Press, and therefore is offered as an admission as against the defendant, Greater Buffalo Press.

Mr. RAICHLE: Admission of what, for instance? If the Court please, if he would say, "I offer it to prove there was competition," or "offer it to prove there wasn't," or "I offer it to

1177 prove there was an agreement," that is one thing. But to put in several documents, twenty or thirty years apart, some of them long before the alleged conspiracy is claimed to have taken place, with statistical information—for instance, let me use the first document which, by the way, is the document to which I have no serious objection, but I think it will illustrate a point. This is an application for a loan, apparently, made by International Color Printing after it had become a subsidiary of Greater Buffalo. Now then, is it offered to show that International Color Printing was seeking to, at that time, finance the building of the Sylacauga, Alabama, Plant; is it offered to show that it either did or did not need the financial standing of Greater Buffalo Press to accomplish it, or is it offered to show some historical fact which is recited

1178 to the bank, and which counsel might later claim as some significance; some historical fact related to a time there was no conspiracy; or is it offered to show some statistic which might appear in the document? If so, what is the claimed significance of them? Is it offered to show a list of the customers serviced at that time so they may be contrasted with some other time? What is the basic purpose of the offer of proof? I think I am entitled to know that.

The COURT: All right.

Mr. BERNSTEIN: I'll cut the time short by responding directly to counsel's question. It is offered to prove Topic 2; that International Color Printing printed exclusively for King, and unlike Greater Buffalo, did not contract with newspapers for the sale of color comic supplements. Exhibit P-2 through P-6, which goes back in history, shows the contractual arrangement between King Features and International prior to that.

Exhibit P-1 is being offered at this time for the first two
1179 paragraphs—the last two paragraphs on the first page,
and the third paragraph on page 2, in order to make the Exhibits P-2 through P-6 intelligible, to summarize them and give a comprehension of what the businessmen did; to facilitate this trial, to simplify the presentation; and I submit again, Your Honor, we will save a considerable amount of time with respect to the documents if the Government is permitted to read the portions which it is going to rely on, that it considers significant, at that time offering the entire document in evidence subject to the defendant's rights to strike or read other portions.

The COURT: There has been an offer. I want to hear objections. Do you object to it?

Mr. STEVENS: Yes, I object to it. I have an additional reason—

Mr. RAICHLE: I object to it.

Mr. STEVENS: I have an additional reason, and I
1180 believe I am accurate, that this sequence of documents must have been identified—if they had been identified at all—in an examination by counsel for the Government of Mr. Gorman in connection with the motion for a preliminary injunction. That was not a proceeding to which NEA was a party.

Mr. BERNSTEIN: May I—

Mr. STEVENS: If I may finish. And we have stated to the Government that we have no objection to their using copies, nor do we contest the documents came from the file of whatever source they designate, but these are not matters as to which NEA has had a right, any right of inquiry. There will be others of that same kind.

The COURT: I have both objections now, have I?

Mr. RAICHLE: I must say that I am completely confused.

Please don't think I'm trying to persist in the argument; I am trying to clarify my thinking. The Government 1181 always makes the claim in this class of case that time is saved if the documents are taken. Of course, time is saved, but that isn't the be-all and end-all. We are entitled to have him make his case by legal and competent evidence. We shouldn't have to have documents taken by the wholesale and then the burden put on us at a later time to come out to move to strike all the portions and foresee his claims when writing a brief, as to the significance of portions not called to our attention now.

The COURT: Now, I have these objections.

Mr. RAICHLE: I have no objection to No. 1 if it's offered for the purpose he said it was.

The COURT: I am going to receive these generally, objection overruled.

Mr. RAICHLE: Exception.

The COURT: You may read what portions you wish, consistent with our policy, that if there is something more apparently to do with it, it will be all read at the 1182 request of counsel.

Mr. BERNSTEIN: Am I clear; may the record show that P-1 through P-6 are now received?

The COURT: Received in toto. You can read the portion you wish to now.

(Thereupon, Government's Exhibits P-1 through P-6, previously marked for identification, were received and marked in evidence.)

Mr. BERNSTEIN: At this time the Government proposes to read only from Exhibit P-1 in evidence.

Mr. RAICHLE: One other objection; there is no basis of proof of the competence of Mr. Gorman or the authority of Mr. Gorman to make, in behalf of any of the defendants here, particularly Greater Buffalo Press and International Color Printing Company, anything in the nature of an admission, if it is later claimed to be such, against the interest of either defendant, and a historical recitation of the 1183 life of International Color Printing from the year 1922 to date. There is no proof of the accuracy of the letter, there is no proof of the—

The COURT: That is another point. I assume that it was conceded these letters did exist, were created, and were in the file; that part I thought you agreed to stipulate.

Mr. BERNSTEIN: I thought there was a further agreement the documents were authentic.

The COURT: If not, I'm in trouble. I assumed that had been accomplished.

Mr. RAICHLE: I haven't made myself clear. If Your Honor please, this first document is a letter, and it gets to the second paragraph and the gentleman writing the letter starts out, "It was incorporated in 1922," and then it purports, apparently, to give a history of the operation of the company long before Greater Buffalo acquired the stock of the company; and to protect myself, I don't know what 1184 subsequent claims are going to be made about it, I don't know whether it's accurate or not, I assume it was intended to be accurate, it does come from our file or the original did; I am not talking about authenticity in that regard, I am talking about the authority of an officer of International Color to make historical statements that would be in any way binding upon Greater Buffalo.

The COURT: I understand what you mean. You don't know whether Gorman is accurate in what he said. But what he said is accurate on paper and part of the file?

Mr. RAICHLE: That I don't claim.

The COURT: Overruled.

Mr. BERNSTEIN: The first paragraph—excuse me—the salutation: "Dear Sir: I am writing this letter in response to your request that we give you a background of International Color Printing, Co. Company was incorporated in 1922 for the purpose of printing a Sunday Newspaper in Wilkes-Barre, 1185 Pa. In 1924 idea of printing comic supplements for other newspapers was conceived. First order was from King Features Syndicate—300,000 four page sections weekly." I now skip to the next-to-last paragraph: "Company signed a contract with King Features in 1925 to print all of the Syndicate's comic supplements. Later on, because of the distance to Pacific Coast, contract was amended to read 'at least seventy-five percent' of all printing sold by Syndicate. Original contract, and renewals, were in effect from 1924 to June 1955, when we signed a new contract which will carry us to 1965,

with option for renewal. By that time we will have been printing King's work for a period of over forty-one years." I interrupt the reading to invite the Court's attention to the fact

1186 that Exhibit P-2 and P-6 are the documents, the con- tracts that Mr. Gorman appears to have summarized in this paragraph. I continue reading with the last paragraph: "What is King Features Syndicate? It is by far the largest newspaper syndicate in the world. It owns —"

Mr. RAICHLE: The last paragraph?

Mr. BERNSTEIN: Last paragraph of the first page: "It owns rights to comic and editorial features, which it sells to newspapers in every country outside the Iron Curtain. Syndicate has had tremendous growth and International Color has grown with it. Starting with the one single width Hoe Press, with a total capacity of a little more than one million sections weekly, we have grown until we now have the following press equipment—" and I do not read the itemization on page 2, and I skip down to the third full paragraph on page 2, the last sentence: "Greater Buffalo differs from International in a

1187 number of respects, but principally in the fact that it deals directly with newspapers whereas International works exclusively through King Features Syndicate, which in turn sells to the newspapers."

Mr. RAICHLE: Do you mind, there you are starting in the middle of a paragraph. I think you should read the full paragraph.

The COURT: Comply with that.

Mr. BERNSTEIN: Paragraph 3 reads as follows:

"Other newspapers either print their own comic sections or have the work done by smaller printing companies. Total of Greater Buffalo and International Color Printing Company produces over 63,000,000 four page sections weekly. No other printing company produces more than 6,000,000 weekly, and it is safe to say that the extra capacity now in reserve in other plants could not print more than a fractional part of the sup-

plements now produced by International. Greater Buf-
1188 falo differs from International in a number of respects,
but principally in the fact that it deals directly with
newspapers whereas International works exclusively through
King Features Syndicate, which in turn sells to the
newspapers."

Mr. RAICHLE: I think it should be stipulated that the insurance company would not grant the loan, is that right?

Mr. BERNSTEIN: I have no knowledge of that, Your Honor. I am not going to stipulate as to that. If the defendant wishes any stipulation, they can present that to the plaintiff as the plaintiff has done to the defendant, and in the normal course, we will handle that when we come to the defendant's part of the case. I know nothing about it.

Mr. RAICHLE: Are you stating, as an officer of the Court, you don't know that?

Mr. BERNSTEIN: I am stating, as an officer of the Court, I have no knowledge with respect to that loan.

1189 Mr. MOORE: The document in your file doesn't show that?

Mr. BERNSTEIN: I don't make that representation. I have not combed over, personally, the thousands of documents in the file. If the defendant wishes to stipulate, I respectfully submit it should be submitted to counsel so that it could be examined, and it can be studied and hashed over, as has been done heretofore.

Mr. MOORE: Why don't you make that inquiry of Mr. Feldman?

The COURT: You have an invitation to a stipulation, if it can be worked out. We have got to move along.

Mr. BERNSTEIN: The Government proceeds to Topic No. 3, namely, that Greater Buffalo and International were competitors in the printing of color comic supplements in 1954. The Government now offers in evidence a portion of the testimony

of William J. Hammond, in the proceedings held before
1190 this Court on October 25, 1961, in which the appearances were noted, as appearing in behalf of the Defendant Greater Buffalo Press, the firm of Raichle, Moore, Banning & Weiss; appearing in behalf of the Hearst Corporation, Lord, Day & Lord; on behalf of Newspaper Enterprise Association, Inc., Baker, Hostetler & Patterson, by Richard F. Stevens, and the Department of Justice attorneys—

Mr. STEVENS: If it please the Court; I would like to state that we object to the testimony, to the reading of any testimony from Mr. Hammond's transcript for the reason that the examination made—

Mr. BERNSTEIN: May I interrupt, I can save time; this is only offered against the Defendant Greater Buffalo.

The COURT: Is that satisfactory?

Mr. STEVENS: That is perfect.

Mr. RAICHLE: I like the expression, affecting the Defendant.

1191 **Mr. BERNSTEIN:** In favor of the Defendant, Greater Buffalo, Your Honor. At page 184, Mr. Hammond is identified as being at that time Treasurer of Greater Buffalo, having been employed by Greater Buffalo since 1930, associated on a full-time basis since 1945. On page 247, at line 2, Mr. Hammond was asked this question—

Mr. RAICHLE: Just a second, please.

Mr. BERNSTEIN:

"Q. Who do you regard as your competitors in this business? Referring now to the year 1954, who did you regard in 1954 as your competitors in the color comic supplement printing industry?

"A. In the sale of them, Mr. Carlson, or in the production of them?

"Q. Let's take them separately. Who are your competitors in the production?

"A. In production?

"Q. Yes.

"A. Well, all the plants that were in existence; Eastern Color, Star Color, Southern Colorprint, World Color, Acme. I think that about covers it.

1192 **Q. Any others?**

"A. No, not that I can think of.

"Q. Did International Color print any color comic supplements in 1954?

"A. In the production?

"Q. In the production.

"A. Yes, that is right, International Color."

Mr. RAICHLE: You are going on, aren't you? Continue please?

Mr. BERNSTEIN:

"Q. Who were your competitors in 1954 in the sale of color comic supplements?

"A. Mainly King Features Syndicate.

"Q. Any others?

"A. NEA.

"Q. Do you know whether any of the other competitors in the production that you have named have salesmen?"

"A. I am not aware of it."

The COURT: Are you going to another matter?

Mr. BERNSTEIN: On the same topic I now offer——

The COURT: We will take a short recess.

1193 (Thereupon, the court was in recess at 11:30 a.m.)

(Proceedings resumed, pursuant to recess, commencing at 11:45 a.m.)

The COURT: Yes.

Mr. BERNSTEIN: With respect to Government's Exhibit P-9 for identification, it purports to be a letter dated September 14, 1954, prepared by Joseph J. Gorman, addressed to Local #137, Printing Pressmen and Assistants Union——

Mr. STEVENS: Was that Exhibit 9?

Mr. BERNSTEIN: P-9.

Mr. STEVENS: Do you have 7 and 8 there? You haven't mentioned them.

Mr. BERNSTEIN: 7 and 8 will not be offered at this time. If Your Honor please, Exhibit P-9 is a photocopy, and there is attached to it a typed copy which would make it easier to read. But the document that is stamped is the photocopy. The Government offers it for the first paragraph——

1194 Mr. STEVENS: If you will just wait until we have it, please.

Mr. BERNSTEIN: This is offered as against the Defendant Greater Buffalo.

Mr. STEVENS: Thank you.

Mr. BERNSTEIN: The first paragraph: "Gentlemen: When you met——"

The COURT: Excuse me.

Mr. RAICHLE: Wait a minute, you offer only the first paragraph?

Mr. BERNSTEIN: The entire document is being offered in evidence. The Government will read portions of it which it contends will demonstrate the relevancy at this time and then I, respectfully suggest that at that point the defendant can make objections to the document. Specifically, the Government will consent that every document offered has this standing objection.

Mr. RAICHLE: I don't want to try the case that way. I don't have to settle for that nonsense. I want to be heard on

1195 this, if the Court please. This is the first of the business record documents, so-called. There is nothing hallowed or sanctified or made proper by such a label. The letter, dated September 14, 1954, the year before the acquisition, it is a communication apparently between somebody presumably at International Color, indeed, Mr. Joseph J. Gorman and a Union committee called the Scale Committee. Mr. Gorman at the time was not our employee, had nothing to do with us, no motivation or authority to represent us in any way, shape or manner; and legally there has been no basis laid for the receipt in evidence of the document, except the fact it comes from the files of International Color Printing. It raises this question of whether the mere fact that it comes from the files of some business concern makes it competent against somebody else. There is

1196 no proof it was made in the ordinary course of business; much less, that it was the ordinary course of business to make such a record. There is no proof that the statements therein contained are true and correct. There is no basis for the statements made in the document or for the receipt of the statements made in the document concerning the competitive picture to which the document from time to time and from place to place relates. In short, none of the requirements for the receipt in evidence of the document have been even *prima facie* attempted to be complied with. All that counsel says is that he will read and from that Your Honor will see that it is in a measure admissible. I respectfully submit that when we get to the important aspects of this case, and we are on the threshold of it with this document, there should be legal, 1197 competent evidence as required by the authorities to establish the basis on which the document can be received.

Mr. BERNSTEIN: May I be heard, Your Honor?

The COURT: Yes.

Mr. BERNSTEIN: This document is not being offered under the business records rule. This document is being offered for the fact that on September 14, 1954, Mr. Gorman, as President, as an official of International Color Printing, made certain representations to a Union in the course of bargaining. The fact those representations were made, regardless of whether they are true or not, is something for the Court to weigh in the determining of their accuracy.

The COURT: Sustained. I do not accept that theory.

Mr. BERNSTEIN: Very well, Your Honor. The Government reserves the right, if it might, to call the author of the document at a later time.

The COURT: That is different.

Mr. BERNSTEIN: To offer the document. The Government offers in evidence the testimony from the proceedings of October 26, 1961, before this Court, the testimony of Robert Brader, as against or in favor of Greater Buffalo only. On page 279, line —

Mr. RAICHLE: Wait just a second. We don't have that. We are borrowing one.

Mr. BERNSTEIN: I propose to go to line 25 on that page:

"Q. For the record, will you state your name and address, sir?

"A. Robert Brader, 47 Kadow, Wilkes-Barre, Pennsylvania.

"Q. By whom are you employed, Mr. Brader?

"A. International Color Printing Company.

"Q. How long have you been employed by that company?

"A. Twenty-two years."

On line 16:

"Q. What has your position been with the International Color Printing Company?

"A. I have been employed in the Mailing Department.

"Q. Is that over the entire period of your employment?

1199 "A. Yes.

"Q. Are you a member of any Union?

"A. Yes.

"Q. What Union is that, Mr. Brader?

"A. Well, presently it is the International Mailers Union."

I then propose to continue reading at page 285, line 2:

"Q. Did Mr. Gorman describe Greater Buffalo as his chief competitor in the course of these discussions?"

Mr. RAICHLE: Excuse me, just a minute, I move to strike that out. I object to this. This is a witness testifying to something that Mr. Gorman is alleged to have said to him in 1948 and the year subsequent to 1954. That is before we had any connection with this International Color Printing of any kind or character. Mr. Gorman would have no authority in 1948

down to 1954 to make a statement that would be binding 1200 or admissible against Greater Buffalo.

Mr. BERNSTEIN: May I be heard?

The COURT: Yes.

Mr. BERNSTEIN: If the Court please, the Government position is that in negotiations with the Labor Union concerning labor rights, necessarily the problem of competition and competitors are concerned. So that if the fact is that in the course of this negotiation the subject matter of the negotiation was who the competitors were, what the connection was, the Government submits this is relevant, this is something that can be considered by the Court, whether or not it accepts it and chooses to place reliance is another matter. This is competent for that reason, and another reason is that no objection was raised at the time this question was asked during the course of the proceedings.

The COURT: Those are always saved. You always
1201 save your objection for the time when you are going to consider them before the Court.

Mr. BERNSTEIN: Right, if the objection is one as to form. However, that is, I take it—counsel's objection is not as to form.

Mr. RAICHLE: I said it is basic, it is a hearsay statement by someone unconnected, entirely unconnected with us, in no position to bind us, in no position to affect us, with no authority from us to say anything concerning us.

The COURT: It gives me trouble what Mr. Raichle is saying. You could get a member of the Chamber of Commerce to analyze the situation that he thought prevailed; that should not be binding on the party here.

Mr. BERNSTEIN: It should not at all be binding, Your Honor, but this is a different situation. The Government is offering this not for the truth of the statement, but for the fact that the statement was made. For example, the
1202 question of whether—

The COURT: If that is your purpose, I sustain the objection.

Mr. BERNSTEIN: May I offer the document as an offer of proof, Your Honor?

The COURT: Yes, you may offer it. Now, when I say that I am sustaining the objection, I consider that ruling is correct, but if you and Mr. Feldman want to brief that for me on a particular point, and exchange that with counsel, I

will listen to further argument. To me, now, I have made the proper ruling. I don't mind you trying to persuade me again that I was wrong and there is a basis for it.

Mr. BERNSTEIN: Very well, Your Honor. Line 5:

"Q. Can you identify to the Court any specific occasions on which he so indicated in the period 1948 to 1954?"

Mr. RAICHLE: The same thing, the basis of the 1203 objection.

Mr. BERNSTEIN:

"Q. Take the first occasion that comes to your mind—

The COURT: Same ruling. Let me ask you, what difference does it make that somebody unconnected said something? You don't offer it for the proof of what was said, the truth of what was said; that he said something. I don't understand. I don't get what relevance this has.

Mr. BERNSTEIN: Perhaps I will—

The COURT: If you don't offer it for the truth of what was said—he might have said a hundred things that could be read in here. I don't get that.

Mr. BERNSTEIN: The difference is this, Your Honor; there are some circumstances that the mere fact that someone said something, regardless of whether it is true or not, is a fact to be considered. What were the circumstances under which—

The COURT: If he said it at a time when there was a relationship, I can see that.

Mr. BERNSTEIN: The Government's point is, Your 1204 Honor, that it has been stipulated that Joseph Gorman was the president of International from January 1, 1954, to January 1, 1961, and this document was written September 14, 1954, at the time when he was president of International. The Government claims that the Court can give consideration to the fact that the president of a color comic supplement printer, which has been identified as being in business, stated during the course of Union negotiations, when the principal concern is over what the competitor is paying for Union rates, and the argument that he uses is that he can't pay a certain rate because his competitor is doing something else. Whether or not that is true, whether he was competitor or not, is something for the Court to decide in connection to the weight to be given to it. This is an entirely different matter than if the president of the Chamber of Commerce in a

1205 conversation with somebody else said, "I consider Greater Buffalo a competitor," the circumstances under which this statement was made, the Government contends adds probative value to the fact that if in the course of negotiations the topic they considered was what competition was paying, then it is a relevant consideration for the Court and the Court may, if it wishes, conclude that they must have been competitors.

The COURT: Well, I will make the same ruling on it. I invite you to give me authorities that seem to be in line with your contention.

Mr. RAICHLE: Just by way of a pleasantry; the Union's claim to have obtained an exception to the antitrust laws I didn't know they had any exception to the hearsay law.

The COURT: Well, I ruled on that. Again, I want to invite you, not necessarily that you have to take advantage of 1206 it, to consider that and give me any authorities you think might persuade me. I have made the ruling presently.

Mr. BERNSTEIN: In view of the Court's ruling, I offer, as an offer of proof, the answer:

"A. I remember the first time I was elected Chairman of the Union, that was back in 1947. I think 1948 was my first negotiating committee. It seems to stick in my mind because that was the first time that I was on the negotiating committee and I recall then, from that period, during that period of negotiations, that he mentioned those specific companies, particularly Greater Buffalo. Then again in 1950 we negotiated a contract and again it was the problem of competition. In fact, I have a letter to that effect although no names were mentioned in the letter, I know that he mentioned particular companies during the negotiations that were his competitors."

I then move to page 286—

The COURT: Who is this talking?

1207 Mr. BERNSTEIN: This is the Union official who is talking.

The COURT: Do you want to have some Union official say that he recalls what an International officer was alleged to have said about some period that expired long past, is that right?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: In the nature of things, it doesn't seem to me that is fair, but inherently unfair, if you want to analyze it that way. Go ahead.

Mr. RAICHLE: Your Honor has sustained the objection as to what he calls the offer of proof?

The COURT: That is to get his records, so that if I am wrong, he has something to work on.

Mr. BERNSTEIN: As a further offer of proof, page 286:

"Q. Did you discuss in the negotiations who the competitors were?"

"A. Yes."

"Q. One of these competitors was Greater Buffalo Press?"

1208 "A. Yes."

"Q. Moving a little closer down to date; in the negotiating sessions that just preceded the event of Greater Buffalo's acquisition of International, did any such discussion occur with Mr. Gorman?"

"A. Yes, I think it was our last contract before Buffalo bought International Color in 1954."

"Q. What did Mr. Gorman say at that meeting or those meetings?"

"A. I don't know. Like I say, specifically, Buffalo was our competitor."

"Q. By Buffalo, you mean Greater Buffalo?"

"A. Greater Buffalo."

"Q. You knew what he referred to when he said Buffalo?"

"A. Yes, Dunkirk."

Now, page 281, line 5:

"Q. Directing your attention to the period prior to the June 1955 acquisition of International by Greater Buffalo, what—"

Mr. RAICHLE: This is a new thing?

Mr. BERNSTEIN: Same subject matter.

1209 Mr. RAICHLE: Same offer of proof?

Mr. BERNSTEIN: No, this is a question, page 281, line

5.

Mr. STEVENS: This is all only against Greater Buffalo?

Mr. BERNSTEIN: That is right.

The COURT: Is this a question asked of that same Union leader?

Mr. BERNSTEIN: Yes.

The Court: How does it differ; is this still an offer of proof? I have ruled on the subject matter.

Mr. BERNSTEIN: Still an offer of proof.

"Q. Directing your attention to the period prior to the June 1955 acquisition of International by Greater Buffalo, what subjects were considered at Labor Union negotiations that you attended in your position as Chairman of the Labor Negotiating Committee?

"A. Well, when we negotiated contracts it was always fair wages and conditions and in the period of the discussion to negotiate the contracts, Mr. Gorman always brought out the problem of our higher manning compared to other 1210 plants.

"Q. Did he name the other plants in this period of time, this 1948 to 1954 period?

"A. Yes.

"Q. In the course of negotiations?

"A. He named—there was Wilmington, Buffalo, Dunkirk, Waterbury, Bridgeport and other color printing companies.

"Q. About how many of these negotiating sessions did you attend, directing your attention just to 1948 to 1954, if you can give us an approximation?

"A. Well, I would say at least—the least number would be two a year, each contract year. I think during that period we probably had about five contracts, so I would say in the neighborhood of at least fifteen meetings. I would say the minimum would be about fifteen meetings during that period.

"Q. You have described to the Court what companies were mentioned in connection with Mr. Gorman's statement?

"A. Yes.

"Q. Statements concerning competition, competitors in the industry, you have identified them by name. Did Mr. 1211 Gorman, in the course of those fifteen or so meetings, characterize any of these particulars?

"A. Yes, specifically I would say Dunkirk.

"Q. What do you mean by Dunkirk?

"A. That is the Buffalo, Greater Buffalo.

"Q. Greater Buffalo Press?

"A. That is the Dunkirk plant where they didn't employ mailers on the night shift."

I won't read the rest of it. I now turn to—

The COURT: What happened to Gorman, by the way?

Mr. BERNSTEIN: I believe Mr. Gorman is here in the court-room. And in view of Your Honor's ruling, we may have to shift around and produce Mr. Gorman as a witness at this time.

Mr. RAICHLE: I think more important, the question Your Honor has in mind is did he stay with International after we acquired it; yes, he did and is there today.

The COURT: I was wondering if he was in the same category as Nicht, I hope not. He is still with us?

1212 Mr. BERNSTEIN: I am happy to say he is right here.

Mr. RAICHLE: He wasn't like Nicht while Nicht was alive and now he is totally different.

Mr. BERNSTEIN: If Your Honor please, at this point I was prepared to put on a witness. I haven't had an opportunity to discuss the testimony with the witness in view of the rulings. I wonder if we could adjourn at this time and resume a half an hour early, perhaps?

The COURT: Well, at 12:30 I am finishing up a hearing to suppress some evidence in a felony case. So if we are going to recess, we will have to do it until two.

Mr. BERNSTEIN: Yes, could we recess until two?

The COURT: It is a bite out of our time but if you are not ready we will recess now until two o'clock.

(Thereupon, the court was in recess at 12:00 noon.)

1213 (Proceedings resumed, pursuant to recess, commencing at 2:00 p.m.)

The COURT: I understand Mr. Moore will be a moment late; we will wait for him.

Mr. RAICHLE: His son had a serious operation.

The COURT: You have a live witness now?

Mr. BERNSTEIN: Yes.

The COURT: Have the witness sworn.

Mr. RAICHLE: I think we can start. If I need a document not readily available, perhaps somebody else can give it to me.

The COURT: I don't want to be discourteous to Mr. Moore. I know he has a problem. We will swear the witness and wait for him.

MARGARET LUTZ, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The COURT: Mrs. Lutz, I want to wait for Mr. Moore to return.

1214 Mr. BERNSTEIN: I wonder if we might use this time; we have a memorandum with respect to some points and authorities on the business records rule; may I present that to Your Honor?

Mr. RAICHLE: All right.

The COURT: Mr. Moore, I didn't know there had been any complications. I want you to have ample time to talk to anybody you want to over your problem in the family. Is there some time you need?

Mr. MOORE: No, Your Honor, I am all set.

The COURT: Has he had that operation?

Mr. MOORE: Yes.

The COURT: He seems to be all right?

Mr. MOORE: Thank you, sir.

The COURT: Don't hesitate to get to the phone for any purpose. We have that much time.

Mr. MOORE: Thank you, Judge.

DIRECT EXAMINATION

By Mr. BERNSTEIN:

Q. Mrs. Lutz, will you please identify yourself?

A. Yes, I am Margaret Lutz.

1215 Q. By whom are you employed, Mrs. Lutz?

A. King Features Syndicate.

Q. How long have you been so employed?

A. Twenty-two and one-half years.

Q. In what capacity are you presently employed?

A. Executive Secretary to Mr. Raymond K. Rogers.

Q. Will you please identify Mr. Rogers?

A. He is General Sales Manager.

Q. Of King Features Syndicate?

A. Yes.

Q. And prior to becoming Executive Secretary to Mr. Rogers, what were your duties with King Features Syndicate?

A. Executive Secretary to Frank J. Nicht.

Q. Did that continue up until his death?

A. Yes, sir.

Q. Prior to the time that you had been Executive Secretary to Mr. Frank J. Nicht, did you have any other duties with King Features in a secretarial capacity?

A. Yes, I was secretary to Jack R. Hornaday for a period of almost seven years.

Q. And following that period did you then become secretary to Mr. Nicht?

A. Yes, but not in an executive capacity, I was his 1216 second secretary, so-called.

Q. Would you please describe what the duties of the second secretary were, and the duties of the executive secretary, during the period of time when Mr. Nicht was alive and served as Sales Manager of King Features?

A. Well, let me say that I succeeded a Miss Jedlicka, who left the organization in 1954. I primarily took most of Mr. Nicht's dictation. Only highly confidential matters were dictated by Miss Jedlicka.

Q. Upon Miss Jedlicka's resignation—

A. I succeeded her as executive secretary.

Q. For how long a period, approximately, were you second secretary to Mr. Nicht?

A. Well, let me say that I was employed in Mr. Nicht's office directly for a period of approximately fifteen years.

Q. I show you Government's P-10 for identification, and ask if you are able to identify that document?

A. Yes, Mr. Nicht dictated this to me.

Q. And I invite your attention to the initials at the lower left-hand corner, "FJN:ML;" will you please describe what that indicates?

A. That the memorandum was dictated by Frank J. Nicht to me, Margaret Lutz.

1217 Q. What, if anything, can you tell us about the practice during that period of time when you were secretary to Mr. Nicht of placing the initials in the lower left corner?

A. I always placed my initials in the lower left-hand corner.

Q. On or about January 4, 1954, were you then the second secretary to Mr. Nicht?

A. Yes, sir. Miss Jedlicka left the organization in June of 1954.

Q. And what can you tell us, if anything, concerning the practice of receiving telephone—strike it out. What, if anything, was the practice with respect to incoming calls for Mr. Nicht at that time, or about January 4, 1954?

A. The same as any other time; when I received a telephone call from any particular individual I would leave my desk and announce to Mr. Nicht that so-and-so was on the line and wished to speak with him.

Q. And do you recall whether or not there were occasions during that period when Mr. Walter Koessler made such calls?

A. Could have been any individual.

Q. Do you recall any occasion when Mr. Koessler made such calls?

A. Yes, Mr. Koessler phoned Mr. Nicht occasionally.

Q. Were there any occasions when Mr. Nicht would dictate to you memoranda concerning telephone conversations during this period of January 4, 1954?

A. That was Mr. Nicht's practice.

Q. And tell us about that practice, please?

A. Well now, I just don't know how to answer that question.

Q. What was Mr. Nicht's practice with respect to dictation on or about January 4, 1954?

A. Well, I don't think the date is of primary importance.

Q. Well, was his practice pretty much the same throughout the entire period?

A. Yes.

Q. What was that practice?

A. Following any important telephone conversations, he would dictate memoranda to himself.

Mr. RAICHLE: I move to strike that out—"following any important telephone conversation"—how does she know whether it's important or not?

The COURT: I take it what you are saying is that 1219 when he chose to make a record of a telephone call, it was made?

The WITNESS: Yes.

The COURT: You considered it important; he did not do it in all instances?

The WITNESS: No, he did not do it in all instances.

By Mr. BERNSTEIN:

Q. Now, I invite your attention to the marking, Greater Buffalo Press, at the upper right-hand corner of that document. Do you recognize that handwriting?

A. No, I do not.

Q. Now, what was the practice with respect to filing documents in and about January 4, 1954, or at some other time, if there was a change?

A. We have our central files; but I would say that if Mr. Nicht had sent this particular memorandum to file, he would have so marked it "file" or "attach follow-up."

Q. What was the practice with respect to documents that did not have such markings?

A. They were retained in Mr. Nicht's desk.

Q. And do you recall whether there were occasions 1220 after—strike that out. Is it a fact, Mrs. Lutz, when an incoming call would come for Mr. Nicht, was it the practice that the incoming caller would not get Mr. Nicht directly but some other employee of King?

A. No, Miss Jedlicka or I answered the phone.

Q. Were there occasions when you answered the phone, and some caller was on the phone, you identified him to Mr. Nicht and thereafter he would dictate to you a memorandum concerning that conversation?

Mr. RAICHLE: I object to that, leading, suggestive. Your Honor. Let her tell what happened.

The COURT: True. This is an area that, if this is coming in at all, it must come in under care. So let her tell exactly—you may, if you wish, refresh her recollection if she doesn't recall this particular communication—but ask her if she knows the practice followed then of her own knowledge.

By Mr. BERNSTEIN:

Q. Mrs. Lutz, was the practice followed then pretty 1221 much the same as the practice that was generally followed by Mr. Nicht up until the time of his death?

Mr. RAICHLE: I don't like to be repetitious but that is leading in character.

The COURT: Sustained.

By Mr. BERNSTEIN:

Q. Mrs. Lutz, what was Mr. Nicht's dictating practices during the period of time—

A. He was a very systematic individual. He was at his desk at 8:15 in the morning. He opened the mail, he passed some of it along to his assistants, he re-dated the so-called follow-ups and at nine a.m. he called in his second secretary and dictated for a period of approximately two hours each morning. From eleven to twelve he handled anything else which may have been on his agenda. He left for lunch, as a rule, at twelve, and returned at two, and again dictated to perhaps three or 3:30.

Q. What was the nature of the dictation?

A. The dictation could have been memoranda to himself, general correspondence, inquiries on features, quotations.

Q. You mentioned the word "follow-up;" would you please explain that?

1222 A. We call them follow-ups, you perhaps refer to them as files, in which we retained all that correspondence.

Q. Are you able to ascertain from looking at this document into what category of memoranda it goes?

A. Which document; the one I am holding?

Q. P-10, yes.

Mr. RAICHLE: If Your Honor please, it doesn't appear there are categories. He has not defined the term. I don't understand the question.

The COURT: Does that, by looking at it, mean to you a particular transaction or not, can you answer that?

The WITNESS: Well, it represents a quotation on a ready print run.

The COURT: I mean can you tell us from what source that memorandum emanated, how it came into being, by looking at it?

The WITNESS: It obviously follows the telephone conversation with Mr. Koessler.

Mr. RAICHLE: She deduces that from looking at it; that doesn't mean that is so.

The COURT: This lady says there was a practice of recording certain phone calls, at the selection of Mr. Nicht. She 1223 said that. Now, she has an exhibit for identification in her hands and has looked at it and again, what with respect to conversations over the telephone, does that mean to you? Can you tell us by looking at it that it refers to such?

The WITNESS: I'm sorry, I do not understand the question.

The COURT: All right.

By Mr. BERNSTEIN:

Q. You testified before, Mrs. Lutz, that it was Mr. Nicht's practice in dictating to dictate a certain category of items; what were those?

The COURT: The ones he selected; he called her when he wanted her for this purpose.

Mr. BERNSTEIN: That is correct.

By Mr. BERNSTEIN:

Q. In that connection you mentioned a memorandum to himself?

A. This is a memorandum to himself, yes.

Q. Is this the kind of document that you referred to
1224 as a memorandum to himself?

A. Yes, sir.

Q. Did the memoranda to himself take any particular form?

A. I can't answer that question.

Q. All right. One more question: are you able to state with regard to the frequency with which memoranda to himself were dictated by Mr. Nicht?

A. No, I couldn't state that.

Q. Are you able to tell us whether this was unusual?

A. I would say it was more usual than unusual.

Q. I invite your attention—

Mr. RAICHLE: By what standard is it more usual than not usual?

Mr. BERNSTEIN: If the Court please, Mr. Raichle can cross-examine—

The COURT: There has been no offer yet of this document.

Mr. RAICHLE: Okay, Your Honor, I am sorry.

By Mr. BERNSTEIN:

Q. I submit, Mrs. Lutz, Exhibit P-19 for identification, and ask you if you are able to identify that document?

A. No, this was transcribed by Miss Contorno.

1225 Q. How do you know that?

A. Her initials appear on the lower left-hand corner.

Q. What were her initials?

A. MEC.

Q. And at that time, June 23, 1955, what were her duties?

A. She was second secretary inasmuch as I had succeeded Miss Jedlicka as executive secretary.

Q. Do you know whether or not Miss Contorno's duties were the same as yours when you were second secretary?

A. Yes, they were.

Q. And looking at document P-19, what does that document mean to you as the kind of document it was?

Mr. RAICHLE: I object to that, "what does it mean to her."

The COURT: She can answer if she knows what it is.

The WITNESS: Just a memorandum again to Mr. Nicht following up a telephone conversation with Mr. Koessler.

Mr. RAICHLE: You see, if Your Honor please, if I might, she looks at the document and draws a conclusion. She did not prepare that, has no recollection of it independent of 1226 the document itself.

The COURT: She has testified to a regular routine office practice which she said was the same as hers.

Mr. RAICHLE: I assume—

The COURT: When there comes a time that is offered, I will give you a preliminary examination.

Mr. RAICHLE: Okay, fine.

By Mr. BERNSTEIN:

Q. Now, inviting your attention to Exhibit P-12 for identification, I ask you if you are able to identify that document, Mrs. Lutz?

A. Yes, Mr. Nicht dictated that to me.

Q. And what, if anything, can you tell us with respect to Mr. Nicht's practice concerning appointments?

A. Well, when Mr. Nicht had any appointments scheduled he so advised me.

Q. How did you—

Mr. RAICHLE: I probably sound technical but "whenever he had any appointments he so advised me;" she doesn't 1227 know whether he did or not. There were occasions he advised her he had appointment. I am sure he did not bare his life to this woman. He might have had appointments she didn't know about. She cannot state within the rules of evidence that whenever he had an appointment, he told her.

Mr. BERNSTEIN: If the Court please, I respectfully submit that that is the purpose of the cross-examination. If I am not

permitted to proceed to develop any points, the witness will be stopped. When the witness has completed her testimony, if there hasn't been a sufficient foundation laid, based on her own knowledge, and based on competent evidence, the documents will not be admitted. I respectfully submit this is proper cross-examination rather than an objection to a particular question.

The COURT: I take it there could be appointments made without your knowing?

The WITNESS: There could be. I recorded his business 1228 appointments as given to me.

The COURT: He did, with regularity, tell you there were appointments for the day?

The WITNESS: Yes, so that I would remind him.

By Mr. BERNSTEIN:

Q. Did you keep any record with respect to it?

A. Yes, I had an appointment book.

Q. And how did you make entries in that book?

A. I entered them as given to me by Mr. Nicht and then on the date of the appointment I would type the scheduled appointment for him for a given day.

Q. What, if anything, was his practice with respect to memoranda—strike it out. Did Mr. Nicht have a practice with respect to preparing memoranda following appointments?

A. Following appointments?

Q. Yes.

A. Yes, he did.

Q. What was that practice?

Mr. RAICHLE: If Your Honor please, to have this witness give the conclusion that something amounted to a practice is not proper. That is the basis of this objection to this line of inquiry when that word or synonym is used. She may tell what he did but it is for Your Honor to say whether it was a practice or not. They always like to wholesale it, "did he have a practice"—

The COURT: Overruled.

Mr. RAICHLE: What did he do, you decide.

The COURT: Overruled. This lady was just as close, obviously, as Miss Lennon and I are in our business relationship. She was his executive secretary or his second secretary, she is testifying

as to a routine, regular office practice. Overruled. Read the question.

(Thereupon the last question was read by Reporter.)
By Mr. BERNSTEIN:

Q. What was that practice, what was his practice?
A. Following appointments?

Q. Yes.

1230 A. Invariably dictated memoranda to himself.

Q. When you say "memoranda to himself," do you mean in the form in which P-12 appears?

A. Yes.

Q. Now, where was Mr. Nicht's office located at that time?

A. On the fifteenth floor of 235 East 45th Street, Manhattan.

Q. And are you able to state whether or not it was customary for Mr. Koessler to be out of town on business trips during the period of April 21—

Mr. RAICHLE: Do you mean Koessler or Nicht?

By Mr. BERNSTEIN:

Q. Mr. Nicht?

A. I beg your pardon?

Q. Are you able to state, yes or no, whether it was customary for Mr. Nicht to be away from his office frequently on business during the period of April 21, 1954?

A. No, Mr. Nicht went on business trips very infrequently.

Q. And are you able to state the frequency with which he had business appointments?

A. No, I couldn't state that.

1231 Q. Are you able to state whether or not it was usual or unusual?

A. For what?

Q. To have business appointments?

A. He had regular scheduled business appointments but not necessarily out of town.

Q. Where were most of those held, what location, what geographic location?

A. I would say New York City.

Q. I invite your attention to Exhibit P-22 for identification—

A. This isn't my transcript.

Mr. RAICHLE: Wait a minute.

The WITNESS: This isn't my transcript.

By Mr. BERNSTEIN:

Q. Are you able to identify whose transcript it is?

A. Miss Contorno's.

Q. How would you describe this document?

A. In much the same manner as the others.

Q. Is this then a memorandum?

A. A memorandum to Mr. Nicht.

Q. Is this what you classify as a memorandum to himself?

A. Yes, sir.

1232 Q. Now, I invite your attention to page two, the portion of the page where it says, "Notes for F. J. N.;" are you able to tell us what that indicates?

A. Just notes for his own consumption.

Q. Was this unusual to be in a memorandum for himself?

A. No, I don't think it was unusual.

Q. Inviting your attention to document P-67 for identification—

A. Again this is—

Q. One minute, please.

A. Excuse me, I beg your pardon.

Q. Are you able to tell us who prepared that document?

A. Miss Contorno.

Q. Was that period the period of time when she was second secretary?

A. Yes.

Q. Was this a memorandum to himself?

A. Yes.

Q. I invite your attention to the marking in the center of that document, can you tell us what those are at the upper center of the document?

A. Are you talking about the shorthand notes?

Q. Yes.

1233 A. I can read Greater Buffalo, I'm not too certain of the first few notes.

Q. The shorthand notes at the top say Greater Buffalo?

A. I believe that reads "All of this—attach all of this to Greater Buffalo Press."

Q. Do you know who prepared those notes?

A. No, I do not.

Mr. RAICHLE: What are you talking about?

The WITNESS: The Pitman shorthand in the center.

Mr. RAICHLE: Whose is it?

The WITNESS: I don't know, I'm trying to read the notes.

Mr. RAICHLE: It could be somebody in the Department of Justice.

The COURT: The witness says she doesn't know, they were not offered either.

Mr. RAICHLE: I mean to say, "Put this with Greater Buffalo—"

The COURT: Well, there is certainly nothing positive about it. The witness says she doesn't know.

By Mr. BERNSTEIN:

Q. Are you positive as to what the notes say?

A. The Pitman shorthand—I would read it, "Attach all of this to Greater Buffalo."

1234 Q. What was the practice with respect to filing documents that had come to Mr. Nicht's attention?

A. You mean Mr. Nicht's procedure for filing?

Q. Yes, ma'am.

A. If he wished them filed he would so mark them; if he wanted them attached to the follow-up, he would mark them, "Attach Greater Buffalo," or whatever it was.

Mr. RAICHLE: Was this—

Mr. BERNSTEIN: If the Court please—

Mr. RAICHLE: Wait, I'm entitled to something, too.

Mr. BERNSTEIN: I'm entitled not to be interrupted by a question.

Mr. RAICHLE: When you proceed improperly, I will interrupt.

The COURT: Now, these shorthand notes certainly were not Mr. Nicht's, were they?

The WITNESS: I can't identify them.

The COURT: Did he take shorthand and use it?

The WITNESS: Yes, I do. I wouldn't know whether these notes were Mr. Nicht's.

The COURT: When he, himself, assigned these memoranda to various files, in certain practice, did he put his note on there or dictate it?

1235 The WITNESS: Yes, he would mark in pen or ink or pencil, file or attach to blank.

The COURT: Is that the nature of the thing you are looking at?

The WITNESS: No, It isn't. If he retained memoranda in his desk drawer, they were not marked file or attach follow-up.

The COURT: There is something on this particular exhibit—

The WITNESS: In shorthand?

Mr. RAICHLE: Which isn't his?

The WITNESS: I couldn't say.

Mr. RAICHLE: Did he write shorthand?

The WITNESS: Yes, he did.

Mr. BERNSTEIN: If the Court please, I respectfully object to any questions of the witness by Mr. Raichle at this time.

The COURT: I was asking some questions. I wanted to find out, it is of interest to me whether she believes that is Mr. Nicht's handiwork on there or someone else's.

The WITNESS: I don't know.

The COURT: All right. It isn't his signature or initials?

The WITNESS: No, it isn't.

1236 By Mr. BERNSTEIN:

Q. Do you know whether or not a secretary to Mr. Nicht would put instructions concerning the filing?

Mr. RAICHLE: I object to that with respect to that particular document.

The WITNESS: She could have; very often, I do that myself.

Mr. RAICHLE: I move to strike that out, she could have.

The COURT: You will have to establish a practice, Mr. Bernstein.

By Mr. BERNSTEIN:

Q. Was there any practice with respect to what you did concerning the filing of the documents under Mr. Nicht?

A. No, no, as I say, normally Mr. Nicht would indicate in his own handwriting whether the memoranda was to be filed or attached. If it were to be retained in his desk drawer then it did not carry pencil markings.

Q. Have there been occasions when you put stenographic notes on a document indicating what was to be done with it?

A. Yes. That was for my own information.

1237 Q. Do you know, of your own knowledge whether there were occasions when Miss Contorno did that?

A. No, I do not.

Q. I invite your attention to Exhibit P-68 for identification and I invite your attention to the markings at the upper left-hand corner of that document. Can you tell us—

Mr. STEVENS: Wait until we get the document please.

By Mr. BERNSTEIN:

Q. I ask you whether you are able to state whether that indicates anything?

A. That looks like Mr. Nicht's ATT, which means attach to Eastern Color Printing Company follow-up.

Q. How do you know that means attach to Eastern Color Printing?

A. That was one of his practices, he has Eastern Color Printing Company underscored.

Q. Are you able to state it was a practice for him to underscore certain words in the documents indicating where it was to be filed?

A. In a case like this he would have to. You are referring to various situations.

Q. And so do I take it that because Eastern Color Printing Company is underlined, and the letters ATT are at the top in Mr. Nicht's handwriting, you conclude this was part of the regular practice of filing these documents in the Eastern—

A. I would say so, yes.

Mr. RAICHLE: I object to that conclusion.

The COURT: Overruled.

By Mr. BERNSTEIN:

Q. I ask you if you can identify this document?

A. Again, it is Miss Contorno's.

Q. What, if anything, can you tell us about this document in connection with what category, what type of document it is?

A. Again, it is a ready print matter, memorandum to Mr. Nicht, yes, the same.

Mr. RAICHLE: Which one are you talking about?

Mr. STEVENS: P-68.

By Mr. BERNSTEIN:

Q. Now, with respect to Government's Exhibit P-11 for identification—

A. This is—

Q. One minute, please.

A. I'm sorry.

1239 Q. We have to wait until the gentlemen get the documents.

Mr. RAICHLE: To avoid confusion.

Mr. BERNSTEIN: To help avoid confusion.

Mr. RAICHLE: It's a step in the right direction.

By Mr. BERNSTEIN:

Q. It has been stipulated that Ward Greene was the general manager of King Features Syndicate from January 1, 1954, to 1958. Mrs. Lutz, can you identify Mr. Greene?

A. This is an inter-office communication to Mr. Ward Greene, who was general manager at that time.

Q. Where did he maintain his offices at that time?

A. 235 East 45th Street on the tenth floor.

Q. King's office was where?

A. On the fifteenth floor at that time.

Q. And are you able to identify Government's Exhibit P-11 for identification?

A. Yes, that was dictated to me by Mr. Nicht.

Q. Was there a practice with respect to inter-office memoranda in the year 1954?

A. A practice?

Q. Yes, a company practice with respect to the form used?

A. You mean inter-office—

1240 Q. Yes, Ma'am.

A. Well, we used the letterhead, as you will note, and—

Q. Note on what, note on P-11?

A. Yes, and this, I might add, was always in duplicate. Memoranda to Mr. Nicht himself were only in original form, so that any memorandum to Mr. Greene or any other member of the organization were always in duplicate.

Q. And was there a practice with respect to the preparation or dictation of these memoranda to Mr. Greene by Mr. Nicht?

A. Was there a practice?

Q. Yes, ma'am.

Q. Well, I think Mr. Nicht kept Mr. Greene apprised of everything of any importance.

Mr. RAICHLE: I move to strike that out, it is not responsive.

The COURT: Strike it out. Was there a practice you observed of communication in this form?

The WITNESS: Yes, sir.

The COURT: Regularly done?

The WITNESS: Yes, sir.

1241 By Mr. BERNSTEIN:

Q. Are you able to state whether it was done routinely?

A. Yes, it was.

Q. I show you Exhibit P-13, and ask you if you are able to identify that document?

A. Yes, this is my transcript.

Q. What can you tell us about that document as to how it was prepared, what the practice was, what category it fits in and so forth? What does it appear to you to be?

A. It is a memorandum on the ready print situation.

Q. Not the subject matter; a memorandum to Mr. Greene.

A. Mr. Greene.

Q. Made routinely in accordance with the practice that you have described?

A. Yes.

Mr. STEVENS: I do not believe it is permissible for this gentleman to say, "Was it prepared routinely." He can ask Mrs. Lutz what she did and from what she did can be derived whether it was routinely. For him to put the rabbit in the hat and act surprised some hours later when we discuss admissibility of these documents seems improper. He has

1242 repeatedly spoken about, "Was there a practice?" I think Mrs. Lutz, with her long experience, is capable of telling us what she did so we can resolve whether it was routine.

The COURT: Supposing you follow that.

By Mr. BERNSTEIN:

Q. Tell us what you did as secretary, not only on one occasion, but—strike it out. Tell us what you did as secretary

concerning the preparation of memoranda to Mr. Greene from Mr. Nicht?

A. Well, I didn't prepare anything. I mean this is a routine inter-office memorandum to Mr. Greene dictated by Mr. Nicht.

Q. And you have described before Mr. Nicht's practices concerning dictating in the morning and in the afternoon; what, if anything, are you able to state concerning P-13 with respect to that conduct of Mr. Nicht's?

A. I don't know what I can tell you other than what I have described as his routine in the office, as far as his dictation was concerned.

Q. Are you able to state anything with respect to P-13
1243 in connection with the routineness of the preparation
of this document?

A. No, just a general inter-office memorandum, commonly practiced.

Q. Ma'am?

The COURT: Commonly practiced.

The WITNESS: Commonly practiced. It still exists today.

By Mr. BERNSTEIN:

Q. With respect to Exhibit P-14 for identification; are you able to state what that document is?

Mr. STEVENS: What are you talking about?

Mr. BERNSTEIN: Formerly No. 166.

The WITNESS: Again, it is an inter-office memorandum from Mr. Nicht to Mr. Greene. Mr. Greene returned it to Mr. Nicht, circled Mr. Nicht's name and said, "Please bring up Friday, WG."

By Mr. BERNSTEIN:

Q. How do you know that?

A. I recognize Mr. Greene's handwriting and, again, this is a common practice to circle the name of the individual to whom it's to be returned.

1244 Q. Which is Mr. Greene's handwriting on P-14?

A. It reads, "Please bring up Friday, WG."

Q. Are you referring to the portion where "please" is not written out?

A. It is "pls."

Q. I show you Exhibit P-21 for identification, and I ask you if you are able to identify that document?

A. Excuse me?

Q. With respect to P-21, are you able to identify that document?

A. This is another routine inter-office communication. I did not transcribe it; Miss Contorno did.

Q. A routine inter-office communication to whom?

A. Ward Greene.

Q. I notice this is a carbon copy, not on the stationery as was P-14?

A. The original should have been on the letterhead.

Q. What are you able to tell us about this document, P-21?

A. Well, in the upper right-hand corner I identify the Att. as my handwriting and my initials, "ML." "Greater Buffalo" wasn't written by me.

Q. What does that Att, ML indicate?

A. Attach.

Q. What would you do with that document?

1245 A. I would have sent that to file for attachment.

Q. To the Greater Buffalo Press file?

A. Yes, sir. That isn't my handwriting, "Greater Buffalo."

Mr. STEVENS: Your Honor, this handwriting is not visible on the copies we have. We would like to be sure what it says.

The WITNESS: "Greater Buffalo" isn't my handwriting. The "Att" is.

Mr. RAICHLE: Which was put on first?

The WITNESS: I beg your pardon?

Mr. RAICHLE: Which was put on first?

The WITNESS: I don't know.

By Mr. BERNSTEIN:

Q. Do you recall whether or not when you had this document and inserted the words "Att" and "ML," whether the words "Greater Buffalo" were on that document?

A. I don't know.

The COURT: If it hadn't been on there what would you be able to do with it?

The WITNESS: This would have gone to the file.

1246 The COURT: If there hadn't been anything, "Greater Buffalo" on there, what could be done in accordance with your office routine? If it had your words on there, "Att," what would happen?

The WITNESS: I should think it would have gone to the Greater Buffalo file.

The COURT: Why is that, from your experience? I mean without those words that you say were not written by you? You look to the body of the communication then?

The WITNESS: Yes.

The COURT: Did that sometimes happen as a routine, there was no designation to file at the top, just "Att?"

The WITNESS: Yes—well, no, because the file clerk would question it as to when and where it should be filed, what file it should be. We would have to designate where it was to be filed or attached.

The COURT: At some time it just said "Att" and got to the file clerk and that person would have to explore where you wanted it filed?

1247 The WITNESS: Yes.

The COURT: Does that happen with some regularity?

The WITNESS: Not with too much regularity; we very clearly define the attachments.

The COURT: How would the document you have in your hand indicate to the file clerk where to file it?

The WITNESS: That is why I said she would have to question it, because this relates to not only Greater Buffalo but International Color Printing Company as well.

By Mr. BERNSTEIN:

Q. Are you able to state whether you ever received inquiries from the Filing Department as to where to file certain documents?

A. If she were in doubt.

Mr. RAICHLE: Who is "she?"

The WITNESS: The head of the File Department, Mrs. Levy.

The COURT: How large an organization was this, executives and employees? I am talking about Manhattan.

1248 The WITNESS: I can only speak for the sales department in which I was so employed. I would say that perhaps there were fifty, including field representatives.

The COURT: How many clerical people, approximately?

The WITNESS: Clerical? I'm only speaking for the Sales Department. The fifty includes the field representatives as well

as the employees of the Sales Department, general employees I am speaking of.

By Mr. BERNSTEIN:

Q. How many clerical employees at that location at that time, approximately?

A. Well, I would hazard a guess, probably twenty.

Q. Who is in charge of the office at that time?

A. Ward Greene.

Q. You said—?

A. Ward Greene was general manager; Mr. Nicht was vice-president and general sales manager—

Q. Now—

Mr. RAICHLE: Who was over who?

The WITNESS: Ward Greene was general manager of the organization over Mr. Frank J. Nicht.

1249 By Mr. BERNSTEIN:

Q. Ward Greene, although he maintained offices in the same building, had his office somewhere else, is that correct?

A. On the tenth floor, yes.

Q. What was located at the office on the fifteenth floor?

A. The Sales Department, domestic sales.

Q. Who was in charge of that department?

A. Mr. Nicht.

Q. Who prescribed the office practices and routine practices with respect to the Sales Department?

A. Mr. Nicht.

Q. I show you Exhibit P-20 for identification—

A. This isn't my transcript.

Q. Just a moment, please.

The COURT: Is Ward Greene still living?

The WITNESS: No, he is not.

Mr. RAICHLE: When did he pass away?

The WITNESS: Mr. Greene? I don't recall the year; perhaps it could have been six or seven years ago. He was succeeded by Frank C. McLearn.

By Mr. BERNSTEIN:

Q. With respect to Exhibit P-20, are you able to 1250 identify that document?

A. This isn't my transcript. Again it's a memorandum to Mr. Nicht.

Q. What does it appear to be to you? Strike the question.
Whose transcript is it?

A. Whose transcript is it? Miss Contorno's.

Q. What are you able to tell us with respect to P-20 as to how it was prepared?

Mr. RAICHLE: As I understand it, she did not prepare it.

The WITNESS: I couldn't tell you that.

By Mr. BERNSTEIN:

Q. With respect to the practice of preparing documents, concerning memoranda to Mr. Nicht—

Mr. RAICHLE: She told us about that, she doesn't know a thing about this document, so she says; she didn't prepare it.

The COURT: Now, what Mr. Bernstein is trying to bring out is that this is a typical type of memoranda made in accordance with the regular business practice with which this lady is most familiar. Now, true, she didn't make it out. Does it follow the format, the pattern?

1251 The WITNESS: Yes.

The COURT: A regular inter-office communication?

The WITNESS: This isn't an inter-office communication.

Mr. RAICHLE: Just a minute. Does Mr. Bernstein embrace what Your Honor said, this is typical; yes or no?

Mr. BERNSTEIN: The preparation of this document is typical, routine fashion, yes, sir.

Mr. RAICHLE: And illustrative of the others, is that correct?

Mr. BERNSTEIN: Yes, sir. Not illustrative of the others; it is prepared—

Mr. RAICHLE: Look what we are doing, would Your Honor please?

The COURT: If you are talking about the contents of it—

Mr. BERNSTEIN: We are talking about the preparation of the document.

Mr. RAICHLE: Look at the bottom of it, see what is going in here.

The COURT: Well—

By Mr. BERNSTEIN:

Q. I invite your attention to the questions at the bottom of Exhibit P-20, which has been invited to the Court's attention, and I ask you whether or not you had occasion, you personally had occasion to prepare notes on memoranda in that fashion?

A. Yes. The answer would have to be yes.

Q. On what occasion, tell us, if you please?

A. I can't enumerate any occasion, but quite frequently following his visits Mr. Nicht would dictate these memoranda to himself.

Q. What were done with them?

A. They were placed in his desk drawer unless they were marked "file" or "attach follow-up."

Q. Who would prepare these memoranda?

A. Mr. Nicht.

Q. He would dictate them; who would do the typing of them?

A. The so-called second secretary, who at that time was Miss Contorno.

Q. Were any of them done by the executive secretary?

A. Could have been.

Q. On what occasions?

A. I can't answer that.

Q. You testified before concerning the difference in duties between the executive secretary and the second secretary?

1253 A. Yes. If Mr. Nicht chose to dictate one of these to his executive secretary, he would do so. That was not his practice as a rule.

Q. I show you Exhibit P-24 for identification, formerly known as Document 106, and I ask you if you are able to identify that document?

A. Again, this was transcribed by Miss Contorno.

Q. What does the document appear to you to be?

Mr. RAICHLE: I object to that.

The COURT: It's the same thing back again. What you are talking about, is that typical?

Mr. BERNSTEIN: This is different.

The WITNESS: This is a little different.

The COURT: Let me see that. I don't have any of these. Did you have in mind giving me copies?

Mr. BERNSTEIN: I had in mind Your Honor would see the original.

The COURT: I know it would be helpful if I saw them as they come up. Each party has one?

Mr. BERNSTEIN: Yes, sir.

By Mr. BERNSTEIN:

Q. What is that document, Mrs. Lutz?

A. This is the so-called sales bulletin.

1254 Q. And I invite your attention to the number 14243; what can you tell us about that Exhibit 24? I ask you what, if anything, can you tell us concerning that numbering system?

A. These sales bulletin have to bear a number because if, say six months later, we wish to obtain a copy of the bulletin relating to KFS-ICP-Greater Buffalo Press, it would be rather difficult to obtain if these were not kept in sort of a numerical order.

Q. And what can you tell us about the practice of—strike it out. Did Mr. Nicht have a practice with respect to the preparation of the sales bulletins?

A. Yes.

Q. What can you tell us about that practice?

A. The sales bulletins were issued frequently, particularly when we obtained new features for sale. These bulletins were distributed to all sales assistants, men in the field, and other individuals in the company.

Q. What can you tell us with respect to P-24, that particular document, with respect to that practice you have just described?

A. What can I add to what I have said?

The COURT: This is one of those?

1255 The WITNESS: Yes, it is.

By Mr. BERNSTEIN:

Q. I invite your attention to Exhibit P-40 for identification, and I invite Your Honor's attention to the last—it was formerly known as Document 102—I invite Your Honor's attention to the notation at the bottom of the document, typed in the Document P-40 for identification, which is a document from J. W. Koessler, President of Greater Buffalo Press, Inc., addressed to Mr. Frank J. Nicht, King Features Syndicate. Mrs. Lutz, inviting your attention to P-40 for identification, I invite your attention to the typed words at the bottom of the document and ask you if you can tell us what that is?

A. A copy of this letter was made for attachment to the Memphis Commercial Appeal readyprint follow-up.

Mr. RAICHLE: We don't object to this document.

By Mr. BERNSTEIN:

Q. And what do the letters "fu" indicate?

A. Follow-up.

Q. Is that an abbreviation for "follow-up?"

A. Yes.

1256 Q. And the initials following that, "MEC?"

A. Miss Contorno.

Q. What was the practice with respect to attaching items like that on the bottom of incoming mail?

A. Well, Mr. Nicht must have suggested that a copy be made for that particular readyprint follow-up rather than the general file.

Mr. RAICHLE: I move to strike it out.

The COURT: You didn't have any objection to this exhibit?

Mr. RAICHLE: No.

The COURT: I am going to receive that now. We don't need this lady to tell us.

Mr. RAICHLE: This is a letter from us.

The COURT: This offer is received, mark it in evidence.

Mr. BERNSTEIN: Thank you.

The COURT: If there is some attachment and something was done with it, and this lady knows about it, that is another subject.

Mr. BERNSTEIN: Yes.

The COURT: It is now an exhibit by consent. You have no objection, Mr. Stevens?

1257 Mr. STEVENS: No.

(Thereupon Government's Exhibit P-40, previously marked for identification, was received and marked in evidence.)

By Mr. BERNSTEIN:

Q. Did you place any notations on that document?

The COURT: I want to be sure—there is no objection to it by Mr. Raichle—it involves NEA, I assume you have no objection?

Mr. STEVENS: We have no objection.

The COURT: All right.

The WITNESS: The Pitman notes are not mine. They read: "Make copy for Memphis follow-up."

By Mr. BERNSTEIN:

Q. What was kept in the Memphis follow-up file of King Features?

A. Apparently there were general follow-ups consisting of regular correspondence in a follow-up pertaining to readyprint only.

Q. What was the Memphis Commercial Appeal?

A. A Newspaper.

MR. BERNSTEIN: At this time, Your Honor, the Government offers in evidence, as entries made in the regular course of business, all of the documents identified by this witness; namely, Exhibit P-10, P-19, P-12, P-22, P-68, P-13, P-21, P-20, P-67, P-11, P-14, P-24; and represents to the Court that following this witness's testimony the Government proposes to offer other evidence by deposition in which it contends a conspiracy will be established between Greater Buffalo and King, and reserves the right to offer some of these documents at that time after that evidence is introduced as declarations of a co-conspirator, in addition to entries made in the regular course of business.

MR. RAICHLE: May I have a voir dire?

THE COURT: Yes.

PRELIMINARY EXAMINATION

By Mr. RAICHLE:

Q. When did Mr. Nicht pass away?

A. February 17, 1964.

Q. When did Mr. Greene pass away?

1259 A. I'm not sure of that date, as I told you before; approximately seven years ago. That may or may not be so.

Q. That is your best recollection?

A. That is my best recollection.

Q. Then, above Mr. Nicht in the hierarchy of the management structure was Mr. Greene, is that right?

A. Yes.

Q. During his lifetime?

A. Yes.

Q. He was succeeded by Mr. McLearn?

A. Yes.

Q. And about those two gentlemen, about the position held by those two gentlemen, who was the next one in the chain of command?

A. I would say Mr. Nicht.

Q. No, no; above Mr. McLearn, above Mr. Greene, who was in command?

A. We have our Hearst executives uptown. I can't say whether Mr. Gortatowsky or Mr. Berlin—which of those was his superior. I couldn't answer that.

Q. Let's get at it a different way, start from the top. In 1954, '55, '56, '57, those years, who was the president of the Hearst Corporation, or the chief executive?

1260 A. Mr. Berlin, as I understand it.

Q. All right. And you knew King Features was a division of Hearst?

A. Yes.

Q. All right. Now, under Mr. Berlin, when he was during those years the president, who was next in line?

A. I don't know.

Q. And below him who came?

A. If you are speaking of the Hearst executives uptown I would not be able to answer your questions.

Q. Mr. Greene and Mr. McLearn were the ones in your orbit who were above Mr. Nicht; right?

A. Yes.

Q. Now then, did you ever see any written rules or regulations or instructions with respect to the keeping of memorandums emanating from either Mr. Greene or Mr. McLearn?

A. No.

Q. You don't know of the existence of any such instructions do you?

A. No.

Q. Mr. Nicht, you say, from time to time on occasions wrote memorandums to himself, is that correct?

A. Yes.

1261 Q. Did he talk to himself once in a while?

A. No.

Q. Not in your presence?

A. No, not in my presence.

Q. He used to complain of not sleeping, did he not?

Mr. BERNSTEIN: I object to this, Your Honor.

Mr. RAICHLE: This is a preliminary.

By Mr. RAICHLE:

Q. Is that right?

A. Yes, it is right.

Q. Didn't he tell you that on occasion when he didn't sleep he got up and occupied himself by dictating into a machine?

A. No, he didn't. He never used the dictaphone machine to my knowledge.

Q. Did he tell you he made memorandums at night?

A. He did that, yes.

Q. Then some days later, after he made the memorandums, he would suggest somebody copy them?

A. Yes, re-dictate them.

Q. These nocturnal inspirations that he had from time to time would be on occasion reduced to pencil memoranda, you say?

Mr. BERNSTEIN: I object.

1262 The COURT: What is the basis of the objection?

Mr. BERNSTEIN: "Nocturnal inspirations."

The COURT: That is a little poetic license here that Mr. Raichle uses once in a while.

Mr. RAICHLE: That was intended as a pleasant description; nocturnal means "night." I don't mean the man's name. It means that period of darkness between sunset and sunrise.

The WITNESS: Yes, Mr. Nicht's name is spelled N-i-c-h-t.

By Mr. RAICHLE:

Q. There is no confusion on the subject?

A. No.

Q. So that at night—spelled in the conventional way—Mr. Nicht used to, on occasion of his insomnia, make notes?

A. Yes, he did.

Q. And sometimes he brought them down in pencil form and some days later suggested somebody write them up, is that right?

A. He would dictate them.

Q. He would dictate them? He would dictate or he
1263 would—

A. I would dictate or he would have somebody copy them.

Q. Sometimes the somebody was you?

A. Could have been.

Q. That is as strong as you can make it. Sometimes the somebody was somebody else?

A. Yes.

Q. There was no particular habit or custom about that; whoever happened to be around when he did on occasion choose to make these notes, he would dictate to; right?

A. Yes.

Q. Now, you said that, as to these notes or memorandum to himself, no copies were made, only the original?

A. They were made only in original form.

Q. I see. And he apparently had a desk somewhere into which the notes found their way?

A. Yes.

Q. Right?

A. Yes.

Q. I suppose Mr. Nicht had a drawer for his personal things, like his check book and his insurance policies, things like that?

A. I don't know of any insurance policy. The check book he retained. I had a checkbook in my desk drawer that 1264 I took care of.

Q. He had personal things in his desk?

A. Yes.

Q. I don't mean to be intrusive, but personal things such as what? Those generally comprehended by the terms; personal correspondence with friends—?

A. Well, he would retain that in his desk drawer, yes.

Q. This same drawer you have been referring to?

A. Yes.

Q. I suppose he had to get tickets, baseball tickets, football tickets, for people from time to time?

A. Yes, he did.

Q. And among those heterogeneous things, you refer to these memorandums about his night time thoughts, which would on occasion find their way?

A. Yes.

Q. Now, sometimes I suppose if he had a busy morning or a busy day, some period of time would go by before he would transcribe whatever notes he made at night?

A. Well, I don't think Mr. Nicht made notes so frequently at night.

Q. Sometimes he made them in the daytime too, or was he too busy?

A. He always had somebody there at his disposition

1285 to dictate.

Q. Now, just in respect to Mr. Nicht's passing—I am not commenting on his idiosyncrasies, we all have them, but he used to sometimes make notes about his hunches and on other occasions about his suspicions and on occasion about his predictions; right?

A. He did.

Q. And he was a moody man, wasn't he; some days he was elated, some days cross?

A. I think we are all like that.

Q. He was that way?

A. He was human.

Q. All we have to do to reflect his mood is to read some of these notes to himself, is that so?

Mr. BERNSTEIN: I object, Your Honor.

The COURT: Overruled.

By Mr. RAICHLE:

Q. All you have to do to recall his mood is to read those notes?

Mr. BERNSTEIN: I object.

The COURT: Overruled.

By Mr. RAICHLE:

1286 Q. Is that right?

A. I don't know whether I could associate his mood with his dictation.

The COURT: I won't limit your examination, but when you are talking about these night writings for whatever purpose, I had the impression what Mr. Bernstein was offering were phone calls jotted down or made shortly after the call?

Mr. RAICHLE: No, no.

The COURT: I don't know that.

Mr. RAICHLE: Your Honor has not been favored with the documents.

Mr. BERNSTEIN: Let's take a little something here—

The COURT: What I am talking about, Mr. Raichle, I had the impression that he got phone calls and then he dictated what he considered the nature of them to be. I don't know yet when he did that. I assume it was during the day. Then I understand there were visitors and they came by appointment

through Mrs. Lutz, and they sat down and he again made a memorandum of that visit. At night when he got through
1267 with his day's work he apparently made some more notes about business. That is the image I have now.

Mr. RAICHLE: Your Honor Has not been favored with the documents.

By Mr. RAICHLE:

Q. You don't remember, as you sit there, any one of these particular documents counsel referred to; remember transcribing or having to do with any one of these documents?

A. If they bore my initials.

Q. Because they bear your initials makes you think you must have had something to do with it; right?

A. I would have to have transcribed it.

Q. Do you remember transcribing this document here? If you do remember, say so, if you don't remember, say so.

A. I didn't transcribe that.

Q. This is Exhibit 107—

Mr. MOORE: Document 107.

Mr. RAICHLE: But it says 107, and somewhere else it says PX-20.

1268 Mr. MOORE: P-20 for identification.

By Mr. RAICHLE:

Q. Let's take this one, it happens to be the one in my hand. Now, he said here: "Combinations such as we have in mind probably would make it possible for us to obtain increases in printing prices for him such as St. Louis, Kansas City, Cleveland, etc." He was in the habit of recording on occasion, from time to time when the spirit moved him, his mental operations?

A. Yes.

Q. Now, let me take you to the back of this document where it says: "Why is he so difficult to reach?" "What happened to his AP Printing?" "Why does he stir things up in Texas?" To whom was he addressing those questions?

A. I know nothing about this document.

Q. I see. Did he used to write that stuff to you once in a while?

A. He could have.

Q. Hypothetical, or rather, rhetorical questions?

A. Yes, he could have.

Q. Would you answer them?

A. No, I wouldn't answer them.

1269 Q. Did you know to whom he was addressing them?

A. To himself.

Q. He was addressing questions to himself?

A. Isn't that obvious?

Q. It seems to me so, but did he ever get around to sitting down and dictating answers to his questions?

Mr. BERNSTEIN: I object to this, Your Honor.

The COURT: Overruled.

The WITNESS: No.

By Mr. RAICHLE:

Q. Why was it—they always say you should not start a question on cross-examination with "why"—why, if you know, was no copy kept of these memorandums to himself?

A. He instructed us to write them in original only.

Q. You say "us;" were you present when he instructed anybody else in that regard?

A. No, that was—well, we were—he would instruct Mrs. Contorno or me not to make copies, not to make carbons of memorandum to himself.

Q. On the grounds they were personal to him?

A. That is right.

Q. That is the reason he stated?

A. Yes.

1270 Q. That is the explanation he gave?

A. Yes.

The COURT: I hate to interrupt. I just read 20 over, Mr. Bernstein. I am looking at Section 32 which says, "It was the regular course of business to make a memorandum of any act, transaction or occurrence or event." You don't consider that an act, transaction or occurrence or event, do you, this philosophical recital in 20, of talking about Mr. Koessler with somebody else? He doesn't say Koessler did anything. It talks about Koessler ought to save money if we were his sales agents. I don't see where that is an act, event or occurrence. It is an event that Mr. Nicht wrote Mr. Greene apparently, but it doesn't identify it as an act, transaction, or occurrence, as I understand it.

Mr. BERNSTEIN: The event, Your Honor—this document is being offered as a business record under the authority of 1271 the United Shoe Machinery Case, 80 Fed. 2nd. Sup. 349.

I am quoting from page 354: "All these writings are admissible not only for the purpose of showing orders of the superior, but pattern of conduct of conducting business, contemporary explanations of ambiguous conduct and motive." These documents are offered for the purpose of showing that an individual, who was sales manager in charge of this office, made a memorandum to himself, and I urge the Court that the memorandum will not and does not indicate an individual who is unbalanced by writing notes to himself. This is the form in which he believed it necessary to preserve a record of what somebody else had told him or what his thoughts were.

The COURT: I don't believe anybody else told him anything here. To me it is a document of musings, about something that he thinks exists in the business world.

1272 Mr. BERNSTEIN: This particular document, P-20, is being offered for the purpose of showing the intent, the state of mind and the purpose of Mr. Nicht at the time that he made certain arrangements with Greater Buffalo, which would be evidenced later. It is offered for that purpose. It is the record—

The COURT: I didn't want to interrupt. This is the only one of these I have read. I don't know whether they are all similar. I suspect they are not.

Mr. BERNSTEIN: They are not, Your Honor.

The COURT: All right, go ahead.

Mr. RAICHLE: Thank you, Your Honor.

By Mr. RAICHLE:

Q. Well now, here's another one, this is No. 266—what is the exhibit number?

Mr. BERNSTEIN: P-67.

By Mr. RAICHLE:

Q. This is the one with the shorthand on it. Is this one of these that went into his desk drawer among the 1273 keepsakes?

A. I would say yes because it is not marked "file" or "attach to the follow-up."

Q. I see. Did he throw away some of these memorandums to himself from time to time?

A. Not to my knowledge.

Q. I see. Would he put them in the drawer?

A. He would.

Q. You just gave them back to him; sometimes you saw him put them in the drawer?

A. Yes.

Q. Now, you never knew of anybody else seeing any of these after they went in the drawer?

A. No, I did not.

Q. Take one like this that we are talking about here; the document says: "Mr. Koessler knows that we are trying to complete our contract with International Color Printing Company;" that is obviously a conclusion, isn't it?

Mr. BERNSTEIN: I object, Your Honor.

By Mr. RAICHLE:

Q. It says: "Apparently he is fixed all right," see that?

A. Not dictated to me.

1274 Mr. BERNSTEIN: Where is the "apparently?"

Mr. RAICHLE: The third paragraph.

By Mr. RAICHLE:

Q. Here's a prediction: "Koessler will undoubtedly want to transfer Atlanta, Nashville and Mobile to that plant," referring to the Coosa River Plant. In addition to his suspicions or his, as he refers to them, hunches, as he refers to them in other letters, he had the habit of sometimes, and on occasions spaced apart, making predictions to himself, right?

Mr. BERNSTEIN: I object.

The WITNESS: I don't know.

By Mr. RAICHLE:

Q. The documents show that?

A. I know that isn't mine.

Q. I see.

A. If you are reading from that, I'm not familiar with that, the contents of that.

Q. I see. Here's a good one, No. 267, what would the exhibit number be there?

Mr. BERNSTEIN: One minute, please. P-68 for identification.

By Mr. RAICHLE:

1275 Q. August 17, 1955; this is one my friend asked you about. It says here: "I have a hunch, —" see that?

A. Yes.

Q. It says: "Ham seemed to like the idea—" who is Ham?

A. Could have been Ham Moore.

Q. Ham Moore. Now—

A. Again, this isn't my transcript.

Q. I see. Let's settle one thing; you don't know what the practice was with respect to transcripts not yours, right?

A. You are reading from these as though I should be familiar with them.

Q. The fact is you are not?

A. No. All I know is that I identified that as a memorandum dictated by Mr. Nicht to himself. This is the practice he followed in dictating memorandums to himself.

Q. Did he ever tell you why he was doing such a thing as that?

A. No, he did not.

Q. Did you ever wonder?

A. No.

Q. All right. Did you ever ask him?

1276 A. No.

Q. Did you ever see anybody else around there doing that sort of thing?

A. Well, some of our boys follow that practice today.

Q. Now then, in your direct testimony you mention a name, Hornady, do you remember that?

A. I beg your pardon?

Q. In your direct examination, when Mr. Bernstein was asking you questions, he asked you about a man named Hornady?

A. He didn't ask me, I volunteered, I said I was Mr. Hornady's secretary for a period of about seven years.

Q. How recently have you seen Hornady?

A. I haven't seen him since he left King Features Syndicate.

Q. What was Hornady's job at King?

A. He was one of Mr. Nicht's sales assistants.

Q. And did Mr. Nicht ever show any of these memorandums to himself to Mr. Hornady in your presence?

A. I don't recall.

Q. You can't ever remember his showing them to anybody, can you?

A. No, I don't.

Q. Where was Nicht's office?

1277 A. He was located at 235 East 45th Street in Manhattan. At that time we were on the fifteenth floor. Today we are on the eleventh, and we were on the eleventh at the time of his demise.

Q. In 1954, '55 and '56, where were you?

A. The fifteenth floor.

Q. He had a private office, did he?

A. Yes.

Q. And there was a file cabinet or filing cabinet in the office?

A. Not in his private office. We have a central filing system which is located on the same floor but outside of Mr. Nicht's office.

Q. And in the central filing system was kept the files of the company?

A. Yes.

Q. That is, the King Features Division of Hearst?

A. That is right.

Q. And at the end of the day any matters that were to be filed as a company matter was filed in those files?

A. Filed or attached to the follow-up.

Q. He didn't keep company files in his desk drawer, did he?

1278 A. No, unless occasionally he asked for a particular file and wished to retain it in the desk overnight. That went back to the files.

Q. They were not handled in the manner the memorandum to himself were handled?

A. No.

Q. You said something about that you thought the memorandums to himself were more usual than unusual. I made a note of that. Do you recall saying that?

A. Yes, but it was in response to a question that Mr. Bernstein asked.

Q. He didn't make memorandums to himself about everything that occurred, just—

A. No, he didn't.

Q. A great many things occurred to which he made no memorandums to himself?

A. That is right.

Q. Weeks would go by without making such memorandum?

A. It is very possible.

Q. Sometimes months?

A. Could have been.

Q. Did he ever tell you what determined whether he would write to himself about something and what determined what he would not so write?

A. No.

Q. He had no habit about that that you know of?
1279 A. No.

Q. And if there was any standard of selectivity, you don't know what it was?

A. No, I wouldn't know that. I know the practice that he followed.

Q. The practice was when he wanted to, he dictated to you or someone else?

A. Yes.

Q. What determined the desire on his part to do it, you don't know?

A. I don't know.

The COURT: May I ask a question, Mr. Raichle? Did this man, Greene, write similar memorandums when he got phone calls and had thoughts?

The WITNESS: I wouldn't know.

The COURT: You never saw—

The WITNESS: He was on another floor in some private office and had his own secretary. They would be able to answer that question.

The COURT: Did you ever examine a file, like Greater Buffalo Press, and see similar memorandum from Mr. Greene in there?

1280 The WITNESS: No, I never examined the files, Judge.

The COURT: You did not?

The WITNESS: No.

The COURT: Now, you were the executive secretary for Mr. Nicht; have you ever seen any memorandum come from Mr. Greene to Mr. Nicht similar to the type of thing he has been writing?

The WITNESS: Inter-office, yes.

The COURT: I'm talking about similar to those exhibits?

The WITNESS: Not similar, no, no.

The COURT: What were the nature of Mr. Greene's inter-office communications as distinguished from these shown you today?

The WITNESS: Well, I couldn't describe the nature, Judge.

The COURT: What is an inter-office communication as distinguished from these we have looked at today from Mr. Nicht?

The WITNESS: An inter-office communication would be from, say, for instance, Mr. Nicht to Mr. Greene, or Mr. Nicht to Mr. Berlin, whereas these individual memorandums 1281 to Mr. Nicht were just retained in the office, they didn't pass from one person to another.

The COURT: They were not passed around?

The WITNESS: No.

The COURT: I think we will take a short recess.

(Thereupon, the court was in recess at 3:35 p.m.)

(Proceedings resumed, pursuant to recess, commencing at 3:55 p.m.)

Mr. RAICHLE: I just have a few questions of the witness.

By Mr. RAICHLE:

Q. Did you know of any general instructions prevailing at King Features Division of Hearst with respect to the destruction of records at all?

A. No.

Q. I mean were there periods of time when the files were gone through for the purpose of destroying—I don't mean anything sinister—

A. That would be the function of the File Department.

I couldn't answer that question.

1282 Q. Whether there was a general practice with respect to the destruction of files periodically or not, you wouldn't know?

A. I wouldn't know.

Q. You know nothing about the filing practices or the instructions in that regard?

A. No.

Q. And these memorandums that counsel has been offering in evidence, and as to which you have testified, came from Mr. Nicht's desk, not from the files?

A. Yes, sir.

Mr. BERNSTEIN: I object, Your Honor.

The COURT: Overruled. This is cross-examination.

Mr. BERNSTEIN: If the Court please, my objection is to wholesaling all of the documents, because it was clear from the testimony that originally there were different categories of documents, not in the wholesale lots, as counsel is doing, offered individually, and the witness was questioned about each document individually.

By Mr. RAICHLE:

Q. Let me see; who took the documents from Mr. Nicht's files, do you know?

1283 A. No.

Q. Strike that out. You got me in a bad habit. Who took them from his desk?

A. I don't know.

Q. Mr. Nicht went to the hospital, was in the hospital at the time they were taken from his desk?

A. I couldn't answer that question, I don't know.

Q. Well, you hadn't seen them between the time of the spaced occasions when he would put these memorandums, or whatever they are, to himself in the drawer, you hadn't seen them from the time he put them in?

A. Unless I had occasion to go to his drawer for something they were there.

Q. Now, when did he go to the hospital?

A. That man has been hospitalized so many times, so many operations, I can't be specific. He had at least, I would say, three or four majors, spaced years apart.

Q. In 1959 was he in the hospital?

A. 1959?

Q. Take your time, I'm not trying to press you. If you don't know you can say you don't.

A. I can't say, no.

Q. Was he in the hospital in 1961?

1284 A. I'm not sure of dates.

Q. Or 1960. Now, do you know how or through what medium the Government came in possession of the documents that were in his desk drawer?

A. I beg your pardon.

Q. Do you know how or through what medium the Government came into possession of the documents that were in his desk drawer?

A. No, I don't.

Q. No one told you?

A. No, sir.

Q. Now, when did you first know you were coming here?

A. Oh, let me see—

Q. Last week some time?

A. Yes, last week.

Q. You never talked to me except as Mr. Bernstein introduced me to you in the elevator at noon?

A. No, I never saw you before.

Q. You never saw Mr. Moore before?

A. Ham Moore?

Q. No, Ham Moore is an alleged conspirator; I am speaking of James Otis Moore.

A. Not this Mr. Moore.

Q. You haven't seen Mr. Stevens before?

A. No, sir.

1285 Q. You haven't talked to anybody representing any of these defendants before you got on the stand?

A. No, sir.

Q. Mr. Bernstein asked to adjourn early so he could talk with you?

A. That is correct.

Q. You did talk with him?

A. Yes.

Q. Now, had you talked with any other Government representative before?

A. Mr. Feldman.

Q. When did you talk with him?

A. I believe it was last Thursday.

Q. Where?

A. In my office, or Mr. Roger's office at the Syndicate.

A. Yes.

Q. He took Mr. Nicht's place?

A. Yes, he succeeded Mr. Nicht.

Q. Mr. Rogers' office?

A. Yes.

Q. He is your present boss?

Q. He doesn't write to himself, does he?

A. Well, he writes memoranda.

1286 Q. Not this character of memoranda, does he, be fair?
A. What do you mean, "this character?"

Q. Well, does he write, "Why does he do this?" "Why
does he stir up trouble in Texas?"

A. He writes memoranda following visits with other people.

Q. You don't know whether he does or not, do you?

A. He may.

Q. That is as strong as you can put it?

A. Yes.

Mr. RAICHLE: That is all.

DIRECT EXAMINATION

By Mr. BERNSTEIN (Continued):

Q. Have you transcribed any memoranda dictated to you by
Mr. Rogers following appointments with other people?

A. I don't think so, no. Again, he may have dictated to the
so-called second secretary.

Q. Does Mr. Rogers dictate memoranda of telephone
conversations?

A. Yes, he does.

Q. And what is the difference in practice between Mr.
Rogers' practice and Mr. Nicht's practice with regard to dic-
tating memoranda?

1287 A. He follows pretty much the same procedure except
Mr. Nicht seemed to have more memoranda on ready-
print than Mr. Rogers would have.

Q. How long has Mr. Rogers held the position that he has
had?

A. Since Mr. Nicht's demise.

Q. Do you recall the date?

A. February 17, 1964.

Q. And I show you Government's Exhibit P-10, and I invite
your attention to the first sentence: "Walter Koessler phoned
me early this morning from Buffalo." I ask you whether that
was the kind of memorandum that was dictated after the notes
that Mr. Nicht would make at night, as Mr. Raichle referred
to?

A. I couldn't say that.

Mr. RAICHLE: The documents speak for themselves, or they don't speak at all.

The COURT: This is the result of a phone call, this has nothing to do with a night writing.

By Mr. BERNSTEIN:

Q. What can you tell us about the manner in which the documents were kept in Mr. Nicht's desk drawer?

A. Oh, I don't think there was any routine to that.

1288 They were placed in the drawer, and whether they were kept in a chronological order, I don't know. I doubt that.

Q. Do you know whether he had any filing system in the drawer?

A. I would say he did not.

Q. Do you know whether—was there any section of the desk that was devoted to filing documents, as distinguished from football tickets and other items?

A. No, he would just place the memorandums in his desk drawer.

Q. Exhibit P-10, is that one of the documents that was in the desk drawer or sent to file?

A. This should have been in the drawer.

Mr. RAICHLE: Wait a minute, if she knows. What was the answer?

The WITNESS: This should have been in the drawer.

By Mr. BERNSTEIN:

Q. Exhibit P-11, are you able to state whether this was in the drawer or sent to the files?

Mr. MOORE: Wait a minute—

The WITNESS: This is a copy, this is a Xerox copy.

The COURT: Let me find that before you talk.

1289 Mr. BERNSTEIN: Your Honor, could we substitute the copies and give the witness the original?

The COURT: Yes.

The WITNESS: There isn't any markings for file or attachment to follow-up. I would say this would have come from his desk drawer.

By Mr. BERNSTEIN:

Q. And what, if anything, can you tell us about the practice of keeping memoranda to Ward Greene?

A. Well, I would say this wasn't generally done. Primarily, memoranda to himself were kept in his desk.

Q. Memoranda to—

A. Lacking markings, I have to say this would have come from his desk drawer.

Mr. RAICHLE: That is the one of May 26th, 1954?

The WITNESS: April 15, 1954.

Mr. RAICHLE: Oh, all right. Anything lacking markings to the contrary, to the best of your knowledge, came from his desk drawer?

The WITNESS: Yes.

1290

By Mr. BERNSTEIN:

Q. With respect to Exhibit P-12, are you able to state whether this document went into the regular company files?

A. My answer would have to be the same. I don't know whose handwriting that is at the upper right-hand corner reading "Buffalo, New York, Greater Buffalo Press." I do not recognize the handwriting.

Mr. RAICHLE: The answer being the same, it came from the desk drawer, in your opinion?

By Mr. BERNSTEIN:

Q. With respect to Exhibit P-19, are you able to state where that document was found?

A. The same thing should apply.

Q. What is that?

A. There isn't any marking at all, it's a memorandum to Mr. Nicht. It would have to come from his desk.

Q. With respect to P-68?

A. No, now this "Att" I identified as Mr. Nicht's handwriting and he has underscored "Eastern Color Printing Company." I should say that one should have been taken from the files.

Mr. RAICHLE: You don't know whether it was or not?

The WITNESS: No, I don't.

1291

By Mr. BERNSTEIN:

Q. Mrs. Lutz—

A. That is marked "Att. Eastern Color Printing Company."

Q. And what was the practice when a document was marked, "Att" in that fashion?

A. We would have a follow-up with Eastern Color Printing. This should have been attached to that file.

Q. Where was that kept?

A. In the general files.

Q. Is that the general files in Hearst or the general files of the Sales Department of King Features?

A. I would say the Sales Department of King Features.

Q. And did Mr. Nicht issue any—strike it out. Who issued—

Mr. RAICHLE: Does Your Honor have this?

The COURT: Yes, I have it. This is the one that says "I spent a few hours with Ham Moore," that is what you are talking about?

Mr. RAICHLE: That couldn't be admissible on any theory.

By Mr. BERNSTEIN:

Q. Mrs. Lutz, with respect to the rules concerning 1292 the filing in the Sales Department office, as Mr. Raichle questioned you about, with respect to the rules concerning dictation and so forth, who made those rules?

Mr. RAICHLE: She said there were no rules.

The WITNESS: There weren't any rules. That was a procedure followed, either marked "file" or marked "attach follow-up." Mr. Nicht would do that.

Mr. RAICHLE: She has represented under oath that there were no rules.

By Mr. BERNSTEIN:

Q. Did anybody establish office practices with respect to the Sales Department of King Features during the period of time—

Mr. RAICHLE: I object to this. We have been all over this. She has told us, as best she could, what was done. I asked her specifically if she had seen any rules or regulations and she said no.

The COURT: I will let her answer this specific question finally. Will you read that back?

(Thereupon the Reporter read the last question.)

1293 Mr. RAICHLE: How can she say someone established a practice?

Mr. BERNSTEIN: I'll withdraw the question.

By Mr. BERNSTEIN:

Q. With respect to Exhibit 67, are you able to state whether that document was sent to the Sales Division files?

A. There is nothing on here to identify it other than the Pitman notes, which I transcribe as: "Attach whole of this to Greater Buffalo."

The COURT: You have to speak pretty well into the microphone or we cannot hear you.

The WITNESS: Yes, sir. The Pitman shorthand notes I had as: "Attach all of this to Greater Buffalo Press." They are my notes.

Mr. RAICHLE: You don't know when they were put on or by whom?

The WITNESS: No, I don't.

The COURT: I wish I had these to look at, I'm completely in the dark. I mean, the copy is all right. I don't know 1294 what you are talking about, I have never seen them before.

By Mr. BERNSTEIN:

Q. Showing you P-24, I ask you if you are able to state whether that came from the company's files?

A. Again there is nothing here that would indicate it came from the file.

Q. That document is the salesmen's bulletin; was there any practice with respect to filing salesmen's bulletins?

A. Yes, the original of the salesmen's bulletins are filed in a hard covered black book we have in the office. I don't know why Mr. Nicht would retain this original in his desk drawer. Copies are made of this bulletin and sent to the salesmen in the field and the men in the company. Why this was retained in his desk drawer, I don't know.

Q. You described the documents that had the word "memorandum" on the top as a memorandum to Mr. Nicht, himself; how did you describe it?

A. If they were memos to any individual, the individual's name would have appeared on them, they would not have been in the original form only.

1295 Q. What instructions did you receive when Mr. Nicht would begin dictating to you concerning the preparation of the memorandum, if any?

A. I am sorry, I don't understand the question.

Q. We have some memoranda there where Mr. Nicht dictated a memorandum to Mr. Greene?

A. That is an inter-office communication from one individual to another.

Q. When Mr. Nicht would begin dictating to you, what instructions, if any—

A. He didn't have to give me instructions if he said memorandum, that was enough, it was a memorandum from Mr. Nicht.

Q. He didn't describe it as a memorandum to Mr. Nicht?

A. He would say memorandum.

Q. If he wanted the memorandum to go to an individual what would he do?

A. Name the individual to whom it was to be sent.

Q. Did it seem odd to you at the time that he would tell you to take a memorandum? Did Mr. Nicht's—

A. I beg your pardon?

Mr. RAICHLE: I move to strike it out.

By Mr. BERNSTEIN:

1296 Q. Did Mr. Nicht's conduct seem odd to you at that time?

A. No, why should it?

The COURT: When you hear an objection, pause.

Mr. RAICHLE: I move to strike it out, whether it seemed odd or not.

The COURT: Sustained.

By Mr. BERNSTEIN:

Q. Mr. Raichle asked you certain questions concerning Mr. Nicht's health and the practice of being unable to sleep, and dictating notes to himself. My question to you, Mrs. Lutz, is did you have any indication during any of the period of time you took dictation from him, did you have any indication from him concerning Mr. Nicht's eccentricity?

A. No, I never thought of Mr. Nicht as being eccentric.

Q. Did you form any impression concerning Mr. Nicht, concerning business, during this time you were with him?

A. No.

Q. Or his attention to business, concerning these after-hour notes and so forth?

A. No.

1297 Q. Mr. Raichle in some questions he put to you suggested there was no routine or pattern to when these notes were dictated, is that correct?

Mr. RAICHLE: She said what she said, it speaks for itself.

By Mr. BERNSTEIN:

Q. Mrs. Lutz?

A. I tried to establish a procedure that Mr. Nicht followed.
Q. What was that procedure?

A. I'm back to repeating myself again.

Mr. STEVENS: I object; repetitious.

Mr. BERNSTEIN: I withdraw the question.

The COURT: I have no clear recollection of any organized system of procedure by Mr. Nicht. I take it, Mrs. Lutz, when he was home, after a business day, sometimes he made notes of what he was thinking about?

The WITNESS: Yes.

The COURT: Sometimes he did not?

The WITNESS: Yes, that is correct.

The COURT: I think you said there were flurries of that one in a while and long lapses?

1298 The WITNESS: Yes.

The COURT: I think you are going to talk about phone calls perhaps, or visitors. If I understand Mr. Bernstein's questions; was there a routine, regular procedure about the time of recording such phone calls or visits?

The WITNESS: No. As the occasion arose, if Mr. Nicht wished to record the results of a visit or lunches, he didn't do it specifically in the morning or in the afternoon or the evening.

The COURT: Now, one of the material questions would be, would he put down a recollection of what was said at lunch, perhaps, several days later?

The WITNESS: He has done that.

The COURT: Now, when phone calls came in you said you or the other girl answered the phone?

The WITNESS: Yes.

The COURT: After that was accomplished and done, was there a routine, regular practice of recording that?

1299 The WITNESS: Not every conversation.

The COURT: When one was recorded was there a routine, regular practice of the time of that recollection of the phone call?

The WITNESS: I don't think so.

The COURT: All right. I don't know exactly if that is the question you are about to ask or not.

By Mr. BERNSTEIN:

Q. Mrs. Lutz, you testified before concerning dictation in the morning and concerning dictation in the afternoon?

A. I said he was a very systematic man. He dictated, as a rule, from nine to eleven and then from eleven to twelve took care of anything on the agenda, and went to lunch from twelve to two, and returned and again dictating from three, three-thirty.

Q. With regard to the notes he made overnight, what can you tell us with respect to what period during the day those would be dictated?

A. That could have been dictated in the morning or afternoon.

Q. And with respect to telephone conversations—
1300 may I have the exhibits—

A. These notes he made at night were not that voluminous, to my way of thinking.

Q. Was that the routine or usual or unusual?

A. It wasn't usual; he had made notes that night.

Q. Invite your attention to Exhibit P-10, I invite your attention to the note attached to that document and ask you if you are able to identify the handwriting on that note?

Mr. MOORE: May we have the exhibit number?

Mr. STEVENS: We don't have the note, to my knowledge I have never seen it. I have never seen that, it was never attached to any copy we received either.

Mr. RAICHLE: I have never seen this. Who did the attaching? Does anybody know? You don't know?

Mr. BERNSTEIN: May I inquire of the witness? I will find out about it.

Mr. RAICHLE: I don't know what that word is. Well, show it to her.

By Mr. BERNSTEIN:

Q. Are you able to identify it?

1301 A. That is Mr. Nicht's handwriting.

Q. And was there any practice with respect to notes like that made by Mr. Nicht?

A. No, he probably jotted these down during a telephone conversation and dictated them, dictated the memorandum.

Mr. RAICHLE: This might not be important, but she said he probably jotted it down.

The COURT: Sustained.

By Mr. BERNSTEIN:

Q. Do you recall any occasions when you observed Mr. Nicht jot down notations during a telephone conversation and then have it affixed to a document?

A. Well, I have seen him make notes, not necessarily attach it to the document after he dictated the memorandum to himself. He could have destroyed the penciled notes.

The COURT: That doesn't necessarily allude to the letter by its terms?

The WITNESS: No.

Mr. RAICHLE: No.

The COURT: In other words, that penciled note on the back doesn't, in its terms, allude to the typewritten letter?

1302 The WITNESS: Well, Mr. Bitner's name is in the typewritten memorandum and it also appears in Mr. Nicht's handwriting.

The COURT: What is the gismo at the bottom that looks like a hex sign?

The WITNESS: That is doodling. He put in a price on-blank—I can't read that word—that is the way I would like it. Then there is doodling there, and then Features at Utica.

The COURT: All right.

Mr. RAICHLE: Did he doodle at night, too?

By Mr. BERNSTEIN:

Q. Mrs. Lutz, you answered Mr. Raichle's question before on cross-examination by stating that you had never met Mr. Raichle before, is that correct?

A. No, I hadn't met Mr. Raichle before.

Q. Had Mr. Nicht discussed with you meeting Mr. Raichle?

Mr. RAICHLE: I never met the man in my life, as far as I can possibly recall.

1303 Mr. BERNSTEIN: No further questions, Your Honor. At this time, Your Honor, the Government offers in evidence Exhibit P-10, as a memorandum made in the regular course of business—

Mr. RAICHLE: Shall I reserve my remarks until he has completed offering all of them, or take them seriatim?

The COURT: Here is one thing I am confronted with. I have never seen any of these exhibits up until today. I haven't had a set of copies. I would like to have a complete set of copies with the Court Exhibit numbers on them when this argument goes on. Some of those I have grave doubts about; others, I haven't read. Now, I want to let Mrs. Lutz go back to Manhattan, if she can, and I am going to reserve the time for the argument on these exhibits, but I don't want to have Mrs. Lutz called back again if we think we have to explore some more with her.

Mr. RAICHLE: I have no more questions.

Mr. BERNSTEIN: I have no further questions.

Mr. STEVENS: No questions.

1304 Mr. BERNSTEIN: I have no further need to question

Mrs. Lutz on the documents. If it meets with Your Honor's approval, I will reserve offering these documents in evidence and offer them later as we get into the—

The COURT: I want a set of copies to look at—I was going to do some homework—I haven't read most of those.

Mr. BERNSTEIN: The Government will rely on the foundation made by Mrs. Lutz without asking any further questions. If that doesn't suffice, there is no need to bring her back.

The COURT: We can release Mrs. Lutz?

Mr. BERNSTEIN: Yes.

Mr. RAICHLE: Yes.

Mr. STEVEN: Yes.

The COURT: I am going to recess. Before you leave—and I would like them soon—I would like a full set of those papers with the number of the exhibit here on them. Then in the morning, the first thing, we will get into the question 1305 of the propriety of these exhibits and the offer. I have a little brief from Mr. Bernstein on these business records, I suppose you have got a copy of that?

Mr. STEVENS: Yes.

The COURT: I have got both those, your brief and Mr. Bernstein's, and if I have a complete set of these exhibits proposed and offered, I will be ready for you in the morning. I will retire, please let me have them, if you can, in about fifteen minutes. Have you a set?

Mr. BERNSTEIN: We will have to have one made.

Mr. STEVENS: I think we could make up a set of these, you were talking about the business records, the last batch?

Mr. BERNSTEIN: Your Honor is referring to all of the documents.

The COURT: All of the exhibits you offered as business records through Mrs. Lutz.

Mr. BERNSTEIN: Was Your Honor concentrating solely on these documents, not on the rest of the case?

1306 The COURT: Just these that are now currently up for passing on by me as to their being properly in evidence.

Mr. BERNSTEIN: We will do that immediately.

The COURT: We will adjourn until ten in the morning.

Mr. BERNSTEIN: Does Your Honor have any copies of the exhibits up there at the moment?

The COURT: Here are Exhibits 1 through 6.

Mr. MOORE: Those are in evidence.

The COURT: Here's Exhibit 9, which I have sustained the objection to presently. I have none of your original exhibits now. Give me a set of those, if you will, before I leave tonight, the ones you are now offering.

(Thereupon, the court was in recess at 4:25 p.m.)

1307 Proceedings of Wednesday, October 13, 1965, commencing at 10:00 a.m.)

The COURT: There is a little change here in my commitments for this week. I just learned that Al Pacini had an extremely serious heart attack.

Mr. RAICHLE: I am sorry.

The COURT: Yes, he was scheduled to go on with me tomorrow on a counterfeiting case. I shall declare a mistrial on that; anyway we couldn't go on. So I can give more time to this tomorrow. I hope that doesn't interrupt anyone's plans because I pretty much told everyone I couldn't.

Mr. RAICHLE: It is all right with us, we can go on tomorrow morning.

The COURT: All right, fine. We will go ahead and try to finish up your end of the case. I think it will be better if we can do it.

Mr. BERNSTEIN: I would prefer it. May I proceed or do you want to wait for Mr. Moore?

The COURT: Here he is now.

1308 Mr. BERNSTEIN: May it please the Court, at this time the Government will withdraw its offer of Exhibit

P-20, as an entry made in the regular course of business, and will offer that a bit later solely as a declaration of a co-conspirator. At this time it renews the offers in evidence of Exhibit P-10, as a memorandum made in the regular course of business. With respect to that document, Your Honor, the Government respectfully contends the witness's testimony yesterday laid the foundation for the admissibility of this document as an entry made in the regular course of business, in that she identified it as having been prepared by the man who was in charge of the particular Sales Division at the office in which this document was kept. In that office, if the Court please, there were approximately fifty people, about twenty clerical employees. The testimony was that it was the routine

1309 practice for this gentleman to make memoranda. The witness described it as a memorandum to himself, although the document appears headed "A memorandum." I would urge that this is in the nature of a memorandum to the files. While it is true a certain category of documents—for one reason or another, we can suggest several reasons but I don't think that is essential at this point—the head of the Sales Division prepared the memorandum that I would describe as a memorandum to the files, chose to file it in his own desk drawer and make no copies but kept it in his own personal possession. An examination of P-10 shows it reports a telephone conversation that he had the very morning of the dictation. It has a note attached to it which the Government respectfully contends the Court can infer would be the kind of notation

that one would make while speaking on the phone and 1310 then, as the witness said, it was his practice to dictate twice a day, routinely, systematically, he would take from that, from the note of the conversation, and dictate a memorandum, and it is obvious from the nature of the document that he wanted to preserve this for his own use as head of this Sales Division, to keep a record of what had actually occurred, what had been told to him in that conversation. This differs in the case urged by counsel. Counsel asks the Court to rely on the case of Standard Oil of California against Moore, which was a private treble damage case, and in that case the Court held that the kind of inter-office communications that were there, reported conversations that salesmen reported they had heard other people say. This particular document, Exhibit

P-10, is a report of a conversation that the writer of the document had, he had personal knowledge of it. And I refer to the quotation on page four of the defendant's memorandum quoting from the record of the case. It says: "The probability of trustworthiness of memorandum and records made and maintained, as provided in Section 1732, lies in the fact that they are routine reflections of the day-to-day operations of the business in whose files the memoranda and reports are found." Then it cites the Palmer v. Hoffman Case, 318 U.S., Pages 113-114. "The matters which reflect the day-to-day operation of a commercial enterprise are those in which it is directly concerned as a participant. Illustrative of these are such matters—" and it then quotes illustrative matter. The Government contends that Exhibit P-10 is trustworthy under this rule. It reflects the day-to-day operation of the business. In this particular case it reflects a telephone conversation of the person who wrote it the day before.

In the United Shoe Machinery Case, 80 Fed. 2nd. Sup. 349, at page 354, the Court holds that under the business record rules, a document is admissible for the following three purposes: For the truth of any event of which the communicating employee had personal knowledge and which occurred within a reasonable time before he wrote it, which in the case of annual reports and most other documents would be one year. Here Exhibit P-10 meets that criteria. The communicating employee had personal knowledge and it recorded any event, and it may be offered for the truth of that event. It was written within a reasonable time, it was preserved to aid in the conduct of the business, and again I refer to the defendant's memorandum, page four, where it quotes from the Standard Oil case, paragraph 18: "It follows that a writing which does not pertain to a matter in which the business was a direct participant, but to some incident, circumstance or activity outside of that business, is not a memorandum or record of an act, transaction, occurrence or event within the meaning of the statute." The Government contends that this document, from its very nature, examination of it shows it was preserved to aid in the conduct of the business and it was concerning a matter in which the business was a direct participant.

The Court: I would like to ask you something, Mr. Bernstein. In your own memorandum, Item 2, you are citing an authority there. You recite as follows: "Letters and memoranda written by each of the defendants are admissible in evidence—" and this is the part I want to talk to you about—"once 1314 prima facie existence of a conspiracy engaged in by the defendant has been established by independent evidence." Now, let's assume that these exhibits that you are now offering do constitute proper memoranda and communications within certain rules of law. Where have you established, as you offer these, "once" it says, "prima facie existence of a conspiracy has been established?" Upon what do you rely that it has been established that these are pertinent to that case?

Mr. BERNSTEIN: I regret, Your Honor, that I created a confusion in that memorandum. The heading above item 2 should be "Declarations of a Co-Conspirator." It is the Government's contention that this particular—well, with respect to P-10, the Government doesn't make that contention at this time. The Government contends there are two bases for which memoranda may be admitted. One is, if it was memoranda kept in 1315 the regular course of business, meeting the test we have just been discussing, and if it is, then you needn't show that the conspiracy has been established by evidence aliunde. However, if there is a document—let's assume that it is a letter from one alleged co-conspirator to a third party; with respect to that document, if it hasn't been established that letter was an entry made in the regular course of business or, in other words, it was unusual that that letter be written, it was not a routine, systematic practice to make that kind of document; under those circumstances, that letter could be admitted as a declaration of a co-conspirator once there had been evidence of a conspiracy. It is the Government's contention that following the admission of these documents, and if the Court would prefer that order, the Government would be glad to do 1316 it—the Government's next item proposes to offer, through the deposition of Frank Nicht, testimony of the evidence of the conspiracy. Then it proposes—it could offer some of these documents made by Nicht as a declaration of a co-conspirator. The Government contends that the document is admissible on two grounds; one ground is that even if the con-

spiracy is not established the document is admitted for the truth of the event because it is an exception to the hearsay rule when memoranda of this character are made routinely and systematically, and in the normal course of business practice, and they may be received as evidence. The Court, by examining the documents, determines how much weight to give it, how much it wants to rely on it. But it is admissible as to the exception of the hearsay rule on the grounds that it is usually trustworthy to take documents that businessmen prepare and rely on and make 1317 their business decisions on, those kind of documents are trustworthy and are the kind of documents that are used to reflect and explain the motive and the intent of the writer. So at this time the Government offers in evidence P-10 under the Business Records Rule.

The COURT: Now, have you other exhibits in the same category?

Mr. BERNSTEIN: Yes, Your Honor. Do you want me to go through all of them?

The COURT: Yes.

Mr. BERNSTEIN: I wanted to offer it on the individual basis so that we wouldn't get the wholesaling Mr. Raichle was talking about. We get arguments as to each document. Whatever infirmity would apply to P-1 may not apply to P-10.

The COURT: It doesn't concern me what order this is done. If you suggest that each should be taken up one by one, I am perfectly willing to conform.

Mr. BERNSTEIN: I prefer to offer P-10.

The COURT: Approach P-10 then.

1318 Mr. RAICHLE: Your Honor, you have very much in mind the basic points. I respectfully submit, with due regard to Mr. Bernstein's learning, that he is woefully mistaken about the rule in conspiracy cases. Basic to the receipt of oral declarations of an alleged co-conspirator, and basic to the receipt of evidence of written declarations of co-conspirators, is the proposition that there must be independent proof of the fact of the conspiracy in sufficient quantity and probative value as to enable the Court to make an initial finding, perhaps not an announced finding or an ultimate finding, but a judicial finding in his own mind that there is proof, which, undenied and unexplained, would establish the fact of a conspiracy. That, as I

say, extends to oral declarations and to written declarations. It would be easy to illustrate. If Mr. Nicht was alleged by some live witness to have said thus and so, the witness being 1319 competent to testify on the subject, such testimony would not be admissible until the conspiracy had been established by independent evidence, to which I have referred, and to which the cases refer. Now then, to get to the written declarations, we take the same route, as I say. Then, basic to all of these documents, which are claimed to be declarations on the part of an alleged co-conspirator, the infirmity in counsel's proof is practically admitted by him. Let our recollections go back to yesterday when he first started to offer these documents. He said that he would then offer proof of a conspiracy. I submit he should have offered such proof before the documents are offered. Getting to the documents themselves, even if the basic requirement respecting independent proof of the conspiracy had been satisfied, the documents on the basis of the 1320 testimony of the good lady of yesterday are inadmissible.

I don't care whether we take them one by one or wholesale, to use the word he borrowed from me. In the first place, there must be proof of rules or regulations or a recognized and generally followed system or practice designed for the purpose, put into operation by somebody in authority to make business record rules, business records admissible. The testimony is that in some desolatory fashion, sometimes at night, sometimes in the daytime, this man would make some memorandums, sometimes in pencil, sometimes dictated, sometimes months would intervene in between; a practice not followed by others in the office and certainly not directed to be followed by anybody, and as the spirit moved him, he put in his desk drawer, for whatever reason, from time to time, some memoranda. Then, while 1321 I am discussing Exhibit 10, let me point out an interesting and, I think, devastating circumstance. Where is that piece of paper, that little slip? Here is a slip of paper next to this P-10 and it says: "Bitner put in a price in"—I can't read the next word; you remember the lady couldn't, and there is a little bit of doodling, and it says: "This is the way I would like it. Feature at Utica."—That is what he wrote down, if indeed he did, contemporaneously with the phone call. What follows, as I say is rather unusual. Apropos of the alleged tele-

phone conversation, apropos of the eleven words that he wrote down in pencil, if he did, he has expanded memorandums dated January 19, 1954; April 15, 1954; May 26, 1954; some of them run into three or four pages containing by actual count upwards

of eighteen hundred words, a magnification of over one
 1322 hundred times, and all predicated on this little piece of doodling that he was doing. Most of the memorandums—and I will get back to P-10—reflect mental operations on his part, mental operations imputed to the other person. We take P-10 and we find such statements as this: "Koessler also told me, unless I am mistaken, that Bitner indicated interest in comic pages—" now then, it says in that little slip of paper: "That is the way I would like it." A reading of the little slip, written by this man in a comparatively high position, still subject to the orders of others, would suggest that he is reflecting his own statement, his own attitude. "Put a price"—whatever that word is—"that is the way I would like it." When you read the memorandum it got around to something where he said: "Koessler also told me that Bitner replied, 'That is the way I

1323 would like it.' " The memorandum is absolutely meaningless without some explanation that doesn't appear. It doesn't conform to the requirements, and rather than recite them all, I might state it does not conform to the basic requirements of the cases. The lady's testimony is fresh in Your Honor's mind, and on the basis of her testimony, and because there has been no foundation laid, and because of the absence of even *prima facie* proof, a scintilla of proof of conspiracy, on the grounds that the document itself does not conform and no basis has been laid in law or fact for its receipt, the business record rule has not been complied with, it was not the ordinary course of business, to distinguish it from the idiosyncrasies of this one man, to make documents like this, he is under no rule or regulation which required it, and for all those reasons I object to it.

1324 THE COURT: There is some interesting language by Judge Sylvester Ryan in the Imperial Chemical Industries Case. Reading from page 512, 100 Fed. Sup., he is talking about this area and the memoranda made by co-conspirator. He said something to this effect: "In addition, a broad agreement to divide world-wide markets, such as is shown in this case,

existing for as early as 1897, cannot be a static one or else it would find itself ineffective due to changing world conditions and new and frequent development in a technical field." He goes on to a more important part, to me at least, and he said: "Revisions, alterations, adjustments and expansions to new and attractive areas were necessarily part of the conspiracy here proven and indeed at the very heart of the successful survival of the altered external factors. Accordingly, the steps taken by each co-conspirator in suggesting alterations, preparing 1325 for conferences, reporting discussions among representatives of the co-conspirators concerning proposed alterations, planning new meaning to effectuate a joint purpose, all are in furtherance of the conspiracy." Now, what he does there is go on, as I read it, to a serious discussion as to whether the question is admissibility or weight given under all conditions.

Mr. RAICHLE: Could I cite, Your Honor, the Krulewitch Case; I'm sure you are familiar with it. There is a landmark case in which Judge Jackson points out the fact that a conspiracy is so often sought to be proved by documents and by declarations which are only admissible when a conspiracy has been otherwise established. You take Judge Ryan's language there, the declaration of a co-conspirator, how can you call someone a co-conspirator until there has been some proof of the conspiracy.

1326 The COURT: Thinking back to what I said to you, Mr. Bernstein, when we started discussing this, because, basically, that is the rule in criminal cases, that you must establish it by independent evidence and then the statements come into view. I wish you would tell me—when you talked before, you seemed to say these come in under a different rule, I didn't quite follow that.

Mr. BERNSTEIN: I regret that I have confused the issue. Let me try to straighten it out this way: Assume this were a check-passing case, and assume it was essential for the Government to establish as part of the issue that on January 3, 1954, Walter Koessler phoned Frank Nicht. Assume that was the fact that had to be established in a check-passing case between somebody who didn't know either one. Your Honor, the Govern-

1327 ment contends under the Business Record Rule, without establishing any conspiracy on the part of Nicht and the witness on the stand, or anybody else, this document with the foundation laid in this case could be offered as evidence there was a phone call on that day. It could further be offered as evidence as to the contents.

The COURT: Is that all you are offering P-10 for, to show there was a telephone conversation?

Mr. BERNSTEIN: And also the truth of the conversation, assuming that conversation were in issue, because otherwise it would be hearsay, obviously it would be hearsay to offer the proof of that conversation. But supposing the substance of that conversation would be an issue, Frank Nicht is dead, supposing it had to be proven what the conversation was; it could be done under the Business Record Rule once you have shown this document was prepared in the regular course 1328 of business, under the circumstances that it was done systematically, that is the end of that rule, period.

There is another set of rules, another exception to the hearsay rule, and this is still a second exception. That is what Your Honor was referring to, this declaration of a co-conspirator. If we were offering it under the second exception—this is where I have caused the confusion—at that point the Government would first have to offer proof of the conspiracy, and it concedes it has not done that, and it proposes to do it as the next order of business. So it could either procedurally ask the Court to accept it now, subject to the foundation being later laid or reserve the offer of the documents at this time and put the other evidence in and then re-offer it under both grounds, as a declaration of a co-conspirator and a business record rule, but

1329 since the issue was made on the business record, and we had the witness on the stand yesterday, the Government contends these documents may be admitted under the Business Record Rule even though there is no conspiracy established yet. That is the point that it urges at this time for Document P-10. Mr. Raichle concluded, from the testimony of the witness yesterday, that this memorandum, P-10, was done in a desolatory fashion, not systematically. My view of the evidence is opposite. I gathered from the evidence it was done systematically and routinely. The action of the rule Mr.

Raichle relies on stems from the fact that the relationship in that office was one where the man in charge of the office was establishing the practice and therefore it would be highly unlikely that he would issue written rules to himself as to what kind of documents he would dictate, what kind of memoranda he would keep. Now, with respect to the mental operations, insofar as that is reported on P-10. That goes to the weight the Court will afford to the document after reading it, not to its admissibility. The courts have held that documents that do record the opinions of the writer, and not only the events, generally will not be admitted unless it shows that the opinions are the kind of opinions that the man would make in his routine business judgments, and I think it would be strange to assume Hearst Corporation or King Features Syndicate would hire a man in this important position and pay the salary that it does and not rely on his ability to ascertain what he gleaned from his telephone conversation with Walter Koessler. So that he is qualified to make those kinds of opinions as to the conversations of Koessler. I did not follow

the argument that the note attached to Exhibit P-10 intended to form the basis of other memorandum written at a later date or other times. I concluded, I respectfully submit, that the note attached to it merely reflects this was a note that served as a foundation for the preparation of P-10 alone.

The COURT: I think I'm going to do this: I'm going to listen to the argument on each one of these offered documents, and I am going to reserve decision on that offer during that argument in each instance unless I feel there is one or two that clearly are one way or the other, and have that on the record and accomplished so we can move along, and then we'll talk about the next step in your proof.

Mr. STEVENS: Could I say a word?

The COURT: Yes.

Mr. STEVENS: With reference to the objections to Exhibit P-10: According to my notes, and being fair with Mrs. Lutz, I'm trying to clarify exactly what was done with reference to memoranda of telephone conversation; her testimony 1332 concluded virtually with your questions addressed to her as to any regularity of practice in connection with telephone

conversations, and she said, if I recall it correctly, that there was no regularity about it, there was no routine about it. You asked her further was there any routine about the time when such memoranda as were dictated were in fact given to a secretary, with reference to the incident of the telephone calls and she said there was no regularity, no pattern, no established practice in that connection. The net result of that testimony, as I recorded it in my notes, there was no routine concerning recording telephone calls or conferences; that any record which was made could be made a period of several days after the event. Now, we, in discussing this document, it seemed to me get into

particulars which in some degree miss the point because the statute is called a Business Record Statute and the fact is that this is not a business record because the statute requires that it be made in the course, a regular course of such business, and that it was the regular course of such business to make such memoranda; and the fact of the matter is that this was an idiosyncrasy of Mr. Nicht, and when he called his secretary in, whether it was the executive secretary or the assistant, and said, "Memorandum," those ladies understood that to him and to her that meant a single copy, not for the files of the company, but for his desk drawer. Now, in this desk drawer they were not segregated, as she described it, into files by topics; they reposited there, mere recordizations of notes for his purely personal use, and in no sense company files. I think that actually the inquiry with reference to this document, and indeed all of the documents which carry the designation "memorandum," can stop right there, because, in fact, they are not business records.

The COURT: Well, I have that under consideration brought—I don't take it lightly—I have a much more serious consideration that it was, in a manner of speaking, based on this question of whether the *prima facie* case has to be established before these items may come in. I am aware of what you are talking about. I have not read any cases defining what regular course of business exactly means under all conditions. All right, go ahead.

Mr. BERNSTEIN: I would like to add one thing, Your Honor. These notes were not made for Mr. Nicht's personal use, for private venture or private gain, but made for his personal use

as the head of this Division, it was in his regular course of business of being head of the Division that he prepared 1385 these memoranda. With respect to the routineness, that the witness said there was no fixed time of the telephone conversations, she did say it was his routine practice to dictate twice a day; that the document itself indicates it was done early that day. Now, with respect to Exhibit P-11. P-11, Your Honor—

The COURT: I have a set here.

Mr. BERNSTEIN: Thank you. P-11, as Your Honor would note, is a document that the witness described as a routine interoffice communication, prepared from the head of the King Features Syndicate Division to his superior, who maintained an office in the same building, not in the same suite of offices, on another floor. If Your Honor will recall the witness's testimony, the word "readyprint"—I believe it is visible on the original, not on the copy—in the upper right-hand corner, in pencil, the word "readyprint," and the word "readyprint" underlined in the second line of the document. The witness testified that this was the practice of indicating how it was to be filed. So the Government suggests this indicates that was kept in the regular files of the company's business and the subject matter relates to a report to a superior of the events to enable business decisions to be made in the business, and the business was a direct participant in this item reported. It shows the motive, it shows the pattern of conducting business, and it is matter within the personal knowledge of the man who was making the report. That document is offered in evidence under the Business Record Rule.

Mr. RAICHLE: We object on all the grounds we have been urging to Exhibit 10. I would like to correct Mr. Bernstein.

1337 The witness said when there was no notation on the face of the document or associated with the document it be filed in connection with the particular matter, that was nothing more than one of these memorandums to Mr. Nicht. In other words, it was Mr. Nicht's business in each instance, not the corporate business.

Mr. BERNSTEIN: With respect to that, the Government contends this is a circumstance that the Court would have to decide in viewing all the documents. Some of the other documents, in the same kind of handwriting, are notations which

indicate the file and the subject matter; and the Government contends that the Court can infer from that that these were kept in the regular files, whether kept initially in the desk drawer and subsequently filed, is another matter.

The COURT: I make the same ruling on that.

Mr. STEVENS: With reference to Exhibit 11, I think that we should point out that again, not commenting on the 1338 failure to have the *prima facie* case proven before the introduction of these, and addressing myself particularly to the Business Record Statute, this document, in what I would assume the Government would regard as the key paragraphs, certainly does not purport to state primarily factual matters. This is what he thinks, the writer, Mr. Nicht, should be done. And it is a written statement by him of some things he hopes would be done. He believes "we can gain still further by doing certain things." The second paragraph talks about shifting certain business, and "but I think it should be done." In other words, it is prospective, not factual. And as to P-11, this letter of April 15, 1954, there is no proof of its timeliness, of the relation between the preparation of this letter and the dates of the events which are referred to. Indeed, if one looked 1339 at Exhibit P-10 and again at P-11, it would be perfectly plain that there had to be a great lapse of time between some of the events which were recorded in the latter document so that it is hardly any impression of fresh recordation, it is really a subjective communication by this man on prospective matters which may have been proper for him to consider but it does not make it a business record.

The COURT: I am going to make the same ruling on these as I announced. I was thinking about this whole area of conspiracy, though, Mr. Bernstein, as I encountered it in the past. A simple way of speaking of it, as I recall it, that it is an alleged partnership in some illegal operation or some questionable operation within the law and, as I remember it, the whole foundation for allowing the declarations of one co-conspirator to be used against the other is that once you find the 1340 conspiracy, or illegal partnership, then each partner becomes the agent of the other in furtherance of the conspiracy, and then when one makes declarations in pursuance and furtherance of that partnership, that the law permits. Now, if we had independent evidence—which you concede now is

not here before me, of the illegal partnership, we would head face on into it, as to whether they are proper against the other. That is what gives me trouble. Reading again from Judge Ryan's opinion, he prefacing his statements—rather unusual statements—of alleged co-conspirators and what could be used, like plans for the future, and so forth. He still prefacing that commentary by a statement that, "We have found that a conspiracy has been so proven. The sole issue is whether the challenged statements are declarations in furtherance of the conspiracy. Because of the nature of the conspiracy and 1341 the participants, we conclude they are." Nevertheless, he doesn't skip over the basic requirement.

Mr. BERNSTEIN: Your Honor is right. The Government agrees with the statements that Your Honor made with that statement of the law. That is the Government's position, and I think with this procedure, if Your Honor reserves ruling on these documents, then the Government will proceed with weighing the foundation, through the deposition, for the evidence, and then what is troubling Your Honor the Government believes will be cleared up and the Government will then offer certain of these documents as declarations of co-conspirators under Judge Ryan's rule. The Government makes a technical point here, but ultimately we are going to come out at the same place.

The COURT: I have no argument with the way you are proceeding since there is no jury. I wondered why you chose 1342 to go at it this way in the light of your agreement.

Mr. BERNSTEIN: I'll explain that. Some of these documents—NEA isn't charged with having entered the conspiracy until later on, and while the Government contends that documents, declarations made by a co-conspirator prior to the joining of a subsequent conspirator, are nonetheless admissible to someone else joining. The Government contends—the reason why I proceeded in this way was to avoid that dispute or that question—it would be admissible against the NEA even if the conspiracy had not been proven against them initially.

The COURT: I wondered, that is all. You agree with me, this is a necessary foundation and ordinarily I would think the other evidence would come first. Well, gentlemen, I want to do something here. I just had a short look at Judge Ryan's

1343 opinion in that Imperial Chemical Case and it is of interest to me. I would like to recess for a few minutes and read it now and we will go right back in a few minutes.

Mr. BERNSTEIN: May I invite Your Honor's attention, in that I.C.I. Case, to—

The COURT: Supposing you hand it in.

Mr. RAICHLE: Would Your Honor read the Appalachian Case and Krulewitch Case?

The COURT: That is a basic statement contained in what I said before, I want to see what Ryan said, particularly.

(Thereupon, the court was in recess at 10:55 a.m.)

(Proceedings resumed, pursuant to recess, commencing at 11:15 a.m.)

Mr. BERNSTEIN: If the Court Please, I will withhold the offer of further documents and at this time offer in evidence the deposition testimony taken from the deposition of Frank J. Nicht.

1344 The COURT: Excuse me. I am contented that these documents do not constitute documents that are properly coming in here under the Business Rule, under 1732, and as such, I sustain the objection to them. Now, whether or not they can come in here as a declaration of a co-conspirator, in due course, I am not ruling now on that subject. I am going to now rule, so the people know where they are at, that these are not acceptable and will not be admitted as offered at this time as business records under, I believe, 1732 of the Code.

Mr. RAICHLE: That extends to the exhibit which he is presently offering?

The COURT: That is right.

Mr. RAICHLE: Will the Reporter record these numbers or are they all recorded, I guess they are, the batch you offered yesterday afternoon.

Mr. BERNSTEIN: With respect to the deposition, page 66, line 25—

1345 The COURT: Were these original depositions filed with the Court? I don't have any. If there is one, I would like one.

Mr. RAICHLE: I don't know whether they were or not, Your Honor.

Mr. BERNSTEIN: I am sure they must have been.

The COURT: There is no extra one, I take it? Well, go ahead. Give me the date, who is examining and who is being examined?

Mr. BERNSTEIN: This is the deposition of Frank J. Nicht, a Director of the Hearst Corporation, Vice-President and General Sales Manager of King Features Syndicate Division, taken by the plaintiff on March 20, 1961. The record shows Mr. Nicht is now deceased. He is being examined by Mr. Feldman on behalf of the Government. He was asked this question:

"Q. Do you know whether or not King Features Syndicate stopped soliciting the Waterloo run because of any determination made by King Features Syndicate?

"A. We didn't want it very badly because it was a six-page run.

1346 "Q. I just want to know whether a determination was made by King not to solicit the business?

"A. Yes.

"Q. Was this determination conveyed to the salesman or the person who had solicited the business for King?

"A. Undoubtedly.

"Q. Did this ceasing or failing to solicit the business take place after the telephone conversation allegedly reported in Plaintiff's Exhibit 3?

"A. I think so.

"Q. Referring now to Plaintiff's Exhibit 3, can you recall the substance of the conversation you had with Mr. Walter Koessler on or about January 14, 1954?

"A. This is self-explanatory.

"Q. I want to know whether or not that helps refresh your memory?

"A. It brings some of it back, yes.

"Q. Will you tell us the substance of that conversation?

"A. The substance of it?

"Q. That's right, according to your present recollection?

"A. It has to do with Waterloo, the Waterloo run.

1347 "Q. What was said by Mr. Koessler and what was said by you in regard to the Waterloo run?

"A. I don't remember that.

"Q. You said—"

The COURT: Excuse me, Mr. Bernstein, at this moment that means nothing to me, the Waterloo Run. I don't think there would be any objection to you telling me what is being hit at at this point.

Mr. BERNSTEIN: That was the reason why I wanted to put the documents in.

The COURT: I am sure there will be no objection if you describe it. Let me understand what you are talking about.

Mr. BERNSTEIN: The Waterloo Run—it is the Government's contention that—and this deposition will prove—there was an agreement between Greater Buffalo and King that one of them would get the Waterloo Run, which is a Waterloo newspaper, and another would get Binghamton and Utica, another

1348 one—

The COURT: All right, I understand. You mean the Waterloo, New York, newspaper?

Mr. BERNSTEIN: That is correct.

Mr. STEVENS: Waterloo, Iowa.

Mr. BERNSTEIN: Iowa.

"Q. You said that the conversation had to do with that run. What was said?

"A. I can't remember the conversation.

"Q. I don't want the exact words. I merely want the substance.

"A. The substance was that we did nothing further.

"Q. You are telling me the conclusion now. I want to know the substance of the words exchanged between you and Mr. Koessler."

Mr. RAICHLE: I object to the next answer as not responsive. This must be difficult for Your Honor without—

The COURT: I have sent the clerk to see if we have the original here. I have no notion of what the next question is.

Mr. RAICHLE: The next question is: "I want to know the substance of the words exchanged between you and 1349 Mr. Koessler." And the answer relates to something that was done rather than something that was said.

The COURT: Of course, if that were live testimony before me it would be objectionable.

Mr. BERNSTEIN: That would be objectionable as to form. The objection was not made as to form.

The COURT: It is not responsive. He wants to know the substance of the words exchanged between them, it says: "We laid off." That was the end result, I suppose they desisted. The substance of the words could have been something like, "I said we will get out of your way," or words to that effect.

Mr. RAICHLE: Previously he read the statement but they didn't want the thing.

Mr. BERNSTEIN: The point is, Your Honor, that in the taking of a deposition, the reason for the rule that objections going to form is that—

The COURT: That is not form, Mr. Bernstein, to my mind.

Mr. BERNSTEIN: If the motion were made to strike 1350 at that time, the interrogator would have had the opportunity to rephrase that question or ask another.

The COURT: Most of these depositions are couched, they reserve objections. I assume these were.

Mr. BERNSTEIN: As to the competency, not as to the form.

The COURT: I sustain the objection to that. In the first place, that leaves it purely a matter of conjecture with me as to what was intended and what was asked and what were the words in substance that were said. That is what a jury is supposed to do, find out what is meant by reasonable words. Sustained.

Mr. BERNSTEIN: Yes, Your Honor.

"Q. I take it then, and you tell me whether or not I am correct, that during the course of that conversation both you and Mr. Koessler discussed King Features Syndicate laying off or staying away from the Waterloo Run; is that what 1351 you are driving at?

"A. Yes, sir.

"Q. Is there any question in your mind now that that is the substance of the conversation you had with Mr. Koessler on or about January 14, 1954?

"A. That's right.

"Q. No question at all about it?

"A. No."

Now, on page 70—on page 48, rather, line 12:

"Q. Referring to the period now on or about January 4, 1954, do you know whether or not you had any telephone conversations with Mr. Walter Koessler in regard to any specific newspaper account?

"A. I don't remember.

"Q. I show you Plaintiff's Exhibit 2—"

"I digress for a moment to point out that Exhibit 2 is P-10 offered for identification—and ask you whether this 1352 refreshes your memory as to whether or not you had any telephone conversation?"

"A. Yes, sir, I remember this. This refreshes me."

Now I propose to skip to page 50, unless there is an objection.

Mr. RAICHLE: Go ahead.

Mr. BERNSTEIN: Line 3:

"Q. Will you tell us now the substance of the telephone conversation you had with Mr. Koessler on or about January 4, 1954?

"A. That concerned the printing of the Utica and Binghamton runs.

"Q. What was discussed between you and Mr. Koessler in that telephone conversation in regard to those two runs?

"A. We wanted both of them.

"Q. When you say 'we,' you mean King Features Syndicate?

"A. Yes.

"Q. Who was servicing those runs at that particular time?

"A. My recollection is that they were printed in 1353 Rochester, which was the headquarters of the Gannett people.

"Q. In other words, the Gannett people themselves printed those two runs?

"A. Yes, plus their own in Rochester, I believe.

"Q. What was the substance of the conversation between you and Mr. Koessler regarding those two runs?

"A. That Rochester Printing Plant of the Gannett people was abandoned; therefore, it would be necessary for them to farm out the printing of the Utica and Binghamton runs.

"Q. What did you speak on in regard to that with Mr. Koessler?

"A. We wanted both of them.

"Q. When you say 'we,' you mean King?

"A. King.

"Q. What did Mr. Koessler indicate to you at the time, if anything?

"A. Well, he thought we could arrange it, we could fix it up.

"Q. Fix it up in what way, that King Features could have both runs?

"A. No. He would take one and we would take the other.

"Q. Was that discussed during the telephone conversation?

"A. Yes, sir."

I propose to skip to page 52, line 23.

Mr. RAICHLE: Wait a minute, I think on 52 you ought to read the question on line 10 or 11.

Mr. BERNSTEIN: Line 11:

"Q. I want to know only as to the conversations you had with Mr. Koessler. Never mind what happened after that. During the end or during the middle of the conversation you had with Mr. Koessler, what did he say, summarizing it, and what did you say, summarizing your previous part of the conversation with him?"

"A. I can't remember that. I can't remember that."

1355 "Q. When you hung up the phone, what did you know Mr. Koessler's thoughts to be on the basis of what he told you in regard to those two runs?"

Mr. RAICHLE: There was an objection.

Mr. BERNSTEIN: Leave out that question. Line 23:
1355 "Q. Putting aside the telephone conversation for the moment, what, if anything, happened thereafter in regard to the service of these two runs?"

"A. King Features Syndicate secured the printing of the Binghamton run; Mr. Koessler got the printing of the Utica run."

I skip now to line 15.

Mr. RAICHLE: Wait just a second. I think you ought to read the next question.

Mr. BERNSTEIN: Line 5:

"Q. Are there any other accounts that you recall now ever having spoke to Mr. Koessler about?

"A. I can't recollect them.

"Q. Referring to Plaintiff's Exhibit 1 and the reference therein to a so-called Waterloo run, who, in or about 1954, was servicing this run?

"A. I don't remember that.

"Q. Do you know whether Greater Buffalo was servicing the run at that time?

"A. I don't know, no.

1356 "Q. Do you recall whether or not you ever had any discussion with any color comic printer in regard to this Waterloo run?

"A. Yes, sir.

"Q. Who was the color comic printer?

"A. Greater Buffalo.

"Q. With whom at Greater Buffalo did you discuss this Waterloo run?

"A. Mr. Koessler.

"Q. Do you recall whether that discussion took place in written communications or whether it was during telephone or personal conversations with Mr. Koessler?

"A. I don't remember. I think it was phone.

"Q. Are you able to state now, though, that you did have such discussions with Mr. Walter Koessler?

"A. Yes, sir.

"Q. Following the discussions with Mr. Walter Koessler, what happened in regard to the color comic supplements printing of the Waterloo run?

"A. He obtained it.

"Q. Do you know whether or not King Features Syndicate ever received any remuneration in regard to that run?

"A. Yes, sir.

"Q. What was that remuneration?

"A. I don't remember the amount. It was a commission involved.

1357 "Q. When you say 'commission involved,' who paid the commission?

"A. Greater Buffalo Press.

"Q. Do you know what the amount was?

"A. No, sir.

"Q. I show you Plaintiff's Exhibit 1 and ask you whether in reading the next to the last paragraph that refreshes your memory as to the amount paid?

"A. Yes, sir.

"Q. What was that amount, sir?

"A. \$50 a week."

The COURT: That is not our exhibit?

Mr. BERNSTEIN: No, sir, that was an exhibit in the deposition.

The COURT: I don't want to interrupt, maybe we can get it later.

Mr. BERNSTEIN: Yes, it is, Your Honor, one of ours. What is Document 41?

The COURT: We will go back to it, Mr. Bernstein.

Mr. STEVENS: Isn't it 116?

Mr. BERNSTEIN: Document 116.

Mr. STEVENS: P-13.

1358 Mr. BERNSTEIN: Yes it is P-13, Your Honor.
The COURT: All right.

Mr. BERNSTEIN: Line 4.

"Q. I believe you stated that Greater Buffalo paid that to King Features. Is that correct, sir?

"A. Yes, sir.

"Q. Do you recall how that was paid, by check or in any other form?

"A. I wouldn't know. The Auditing Department would know that.

"Q. Do you know whether King Features still receives that amount.

"A. I think so.

"Q. Do you recall when that amount, the \$50, was first paid to King Features Syndicate?

"A. I don't remember."

I now read from deposition, page 128, line 12:

"Q. Directing your attention, Mr. Nicht, to the testimony you gave last Monday, I would like to know whether you recall testifying that in or about 1954 you made deals or arrangements with Mr. Koessler of Greater Buffalo Press in 1359 regard to newspaper runs situated at Waterloo, Iowa, Utica and Binghamton, New York. Do you recall so testifying?

"A. Yes.

"Q. I now ask you, Mr. Nicht, did you make any other arrangements with Mr. Koessler other than those that you testified about on Monday?

"A. Yes.

"Q. What arrangement, if any, was that, sir?"

Mr. RAICHLE: Excuse me, I move to strike out the question and answer there on page 128: "Directing your attention, Mr. Nicht, to the testimony you gave last Monday, I would like to know whether you recall testifying that in or about 1954 you made deals or arrangements;" we have had the testimony in detail from Mr. Nicht, and to characterize them later as deals or arrangements adds nothing but confusion. The testimony is in. It would be as if a live witness were on the stand and he testified in some detail yesterday, and I said today, 1360 "Do you remember testifying about making deals and arrangements; did you make any other deals or arrangements?" If the testimony does not rise to the dignity or degree of a deal or an arrangement, this question and answer doesn't make it so.

The COURT: There is an objection here. I suppose you might have some basis for it, but it is not important to your continuing examination?

Mr. RAICHLE: No.

The COURT: Start out with: "I now ask you, Mr. Nicht, did you make any other arrangements with Mr. Koessler other than those you testified about on Monday." Start there. You see, Mr. Raichle didn't like the word "arrangements" or "deals." I wouldn't make anything of it, but it does characterize it in the fashion that before a jury it might have some weight. You start at line 20, if you will.

Mr. BERNSTEIN: Well, excuse me, Your Honor, the purpose of it—

The COURT: All right, there is an objection to that. Overruled. Go ahead.

Mr. RAICHLE: In the light of Your Honor's statement, I will withdraw the objection.

The COURT: I make nothing of the use of the word "deal" or "arrangement." I know what was said.

Mr. BERNSTEIN: Line 20:

"Q. I now ask you, Mr. Nicht, did you make any other arrangements with Mr. Koessler other than those that you testified about on Monday?"

"A. Yes, sir.

"Q. What arrangement, if any, was that, sir?"

"A. Involving Lufkin, Texas.

"Q. What was the specific arrangement?"

"A. Greater Buffalo Press was about to open a new printing plant in Lufkin, and we agreed—Mr. Koessler wanted us to give that plant as much volume as we could, so we arranged to transfer some of our runs when the plant opened, and that was about it."

Mr. RAICHLE: Would you mind telling His Honor what year that was?

Mr. BERNSTEIN: Can we put the document in evidence? It all would have been explained. I am going to proceed in presenting this proof. Why can't—

Mr. RAICHLE: Be forthright about it, please, once, once.

Mr. BERNSTEIN: I'm being forthright all the time, Mr. Raichle.

Mr. RAICHLE: Let me just show Your Honor what is going on here.

Mr. BERNSTEIN: I am being asked a question as to the year when I am trying to concentrate on the presentation of the evidence. Any questions thrown at me in a cross-examining form, I can't answer at that moment.

Mr. RAICHLE: After we acquired International Color Printing, the situation was different.

Mr. BERNSTEIN: May I proceed?

Mr. RAICHLE: May Your Honor know the year he is talking about?

Mr. BERNSTEIN: May I proceed?

The COURT: Go ahead.

1363 Mr. BERNSTEIN: I am reading from page 129, line 3:

"Q. What was the specific arrangement?

"A. Greater Buffalo Press was about to open a new printing plant in Lufkin, and we agreed—Mr. Koessler wanted us to give that plant as much volume as we could, so we arranged to transfer some of our runs when the plant opened, and that was about it.

"Q. Was there any arrangement in regard to price?

"A. Yes. On runs which—that is, some of our runs were to be transferred at a certain contract rate, but he agreed to give the Syndicate a cut of fifty cents per thousand on some of his existing business.

"Q. When you say 'existing,' you mean existing at the time prior to Lufkin opening up; is that right, sir?

"A. Yes, sir.

"Q. Did you thereafter at any time get fifty cents pursuant to that agreement?

"A. Not on his business, no.

"Q. You never got that at all?

"A. No.

"Q. Did you get it on the other business?

"A. On some other business.

1364 "Q. Were there any other deals with Mr. Koessler besides Lufkin, Texas?

"A. I can't think of any offhand, without a little—

"Q. Was there—"

The COURT: Excuse me, now we have been talking about 1954. Does this purport to be in that year, this Lufkin arrangement?

Mr. BERNSTEIN: The Government contends, and the documents would have given—

The COURT: What I am talking about this; talking about 1954, then it says Koessler was about to open a plant in Lufkin, "We agreed," when was that?

Mr. BERNSTEIN: The Government contends there were conversations with Koessler concerning the opening of a Lufkin Plant long before the Lufkin Plant opened and before Greater Buffalo acquired International. Those conversations continued even after Greater Buffalo acquired International, and continued up through the opening of the Lufkin Plant.

1365 The COURT: All right.

Mr. RAICHLE: I don't think he answered Your Honor's question.

The COURT: I wanted to know two things; when did Lufkin open?

Mr. FELDMAN: 1958.

Mr. BERNSTEIN: 1958, and this was referring to an arrangement or understanding long before 1958.

The COURT: You have other proof of that?

Mr. BERNSTEIN: Yes, Your Honor. Page 130, line 2:

"Q. Was there any other arrangement or understanding about anything?

"A. Well, we were to leave each other pretty much alone on our respective business."

Mr. RAICHLE: I move to strike that out, it is not responsive.

The COURT: Overruled.

Mr. BERNSTEIN: Line 6:

"Q. By that you mean existing accounts at that time?

"A. That was existing accounts, yes."

1366 Mr. BERNSTEIN: The Government now offers Exhibit P-10, as a declaration of a co-conspirator, P-10 being the document referred to by Mr. Nicht in his testimony.

Mr. RAICHLE: I renew my objection upon all the grounds I have urged before and point out to Your Honor that there is not now the slightest evidence of a conspiracy of any kind or character. There is no proof of wrongdoing. Counsel has sought, unsuccessfully, I submit, to wrest excerpts out of context and to suggest there was some agreement or arrangement with respect to two or three small runs out of the hundreds, possibly thousands of newspapers in this country back in 1954, and that that constitutes some kind of a conspiracy. Certainly not the one charged in the Complaint. More certainly not the one urged in his opening nor in any one of those he has put forward

1367 from time to time during the pendency of this lawsuit.

Now, the confusion with respect to dates ought to be resolved. It is important. After Greater Buffalo Press acquired International Printing Company, of course, International Printing Company was still printing for Hearst. Hearst then had no printing facilities of its own. Hearst was selling features and was selling printing. International Color, and on occasion Greater Buffalo through its Lufkin Plant, were printing for Hearst. To talk in terms of deals, to talk in terms of commissions, when you consider sales being made, is no evidence of any conspiracy. I just can't urge it any stronger than I do. There isn't any proof of a conspiracy. He hasn't made a *prima facie* case. What does he say the conspiracy was to do? Have in mind

1368 that here are thousands of newspapers, many hundreds at any rate, in the United States, all over the United States, that all he has offered here is the fact that when the Gannett paper in Rochester ceased to do their own color printing, and Utica and Binghamton, Koessler got one and Hearst got the other, Hearst got the other because the plant in Binghamton is within a comparatively few miles of Wilkes-Barre, and the plant in Utica is within a comparatively few miles of Buffalo. A logical happening with nothing venal concerning it. Waterloo, Ohio, he read, perhaps inadvertently, from his point of view at the start, where King said he didn't want it, or Nicht said he didn't want it because it was six runs instead of four or something like that, Koessler got the business, we laid off. Not by arrangement with Koessler to lay off but he laid off for something he didn't want. Does that make, 1369 I ask rhetorically, even a *prima facie* conspiracy to restrain trade, monopolize, to do something wrong?

Why, it seems almost frivolous.

The COURT: Is this all the conversation that you claim existed between these principals, Nicht and Koessler?

Mr. BERNSTEIN: The Government contends that this evidence—this is all the deposition evidence that the Government proposes to offer.

The COURT: I will reserve decision on your offer on P-10 until I read what has been brought in. Although it seems to me—is this the evidence of the conspiracy, all the evidence, except as supported perhaps by P-10, if it were to come in?

Mr. BERNSTEIN: It is supported by all the documents. The point is, this testimony—there is evidence in the case already

that this period of time Greater Buffalo and King were competitors in the sale of printing color comic supplements; at this period of time they were competing for Binghamton 1370 and Utica, which just came on the market, also for Waterloo, so they made an arrangement, you take Binghamton, I'll take Utica, and that is the illegal agreement which constitutes a Section 1 violation. They then, with respect to Waterloo, Iowa—Nicht said he didn't want the business, he took \$50 a week thereafter for giving the business to Koesseler.

The COURT: I thought there was some hint, a least, in this case—maybe at the openings—that there was still some work done by King Syndicate in servicing these accounts?

Mr. BERNSTEIN: No, that statement was made by Mr. Stevens on behalf of NEA. This isn't the same type of thing Your Honor, this is the type of arrangement—

The COURT: You contend it's a flat kickback?

Mr. BERNSTEIN: A flat kickback, Your Honor, is the Government's contention, and it supports that contention 1371 with these facts: King, at that period of time, was having its printing done exclusively by International, which was not owned by Greater Buffalo then. Your Honor can see from this deposition that Mr. Nicht wasn't a willing witness; it took a lot of questions to draw out these facts. He, euphemistically, characterized it as a commission, but the fact of the matter was that he received \$50 because Greater Buffalo got the printing account and he didn't get it, and he didn't do the printing in International. Now, the evidence that I have just read in the deposition shows—this is the Government's contention—starting out with those three newspapers, the parties then enlarged, the parties enlarged to the point where they said, "We will pretty much leave each other's customers alone." This is not at a period of time when Greater 1372 Buffalo owns International; this is before Greater Buffalo owns International, they are competitors. The competitors agree they are not going to compete for each other's existing accounts; "We are going to leave each other pretty much alone." At that point of time they are engaged in a conspiracy, a continuing conspiracy to eliminate competition among themselves for all their existing newspaper accounts. The evidence with respect to Lufkin; it is the Government's contention, and other evidence will show, that as part of the transaction, for the acquisition of International, part of the

continuing arrangement, as part of the further arrangement, King would be the exclusive sales agent for Greater Buffalo. Greater Buffalo would be the printer as part of that arrangement. The question of opening Lufkin came into consideration.

They were potential competitors in the South for business there. It is the Government's contention that had 1373 Greater Buffalo had not acquired International, steps were being taken, efforts were being taken to counteract the competition Greater Buffalo was going to offer in Lufkin through International opening a plant in Sylacauga. The arrangement was that Greater Buffalo would transfer the runs to Lufkin, permit Greater Buffalo to open the Lufkin Plant, permit it to acquire International, and thereby the Sylacauga Plant, and the competition between them would be eliminated, with King operating as the sales agent, and Greater Buffalo operating as the printer. Now, it is the Government's contention that on these declarations of a co-conspirator, and the order of proof is entirely up to the Court, it is within the discretion of the Court, but here we have a case without a jury, and the

Government's contention is that you can't prove the 1374 entire conspiracy all at one time, you have to do it in stages. We have made a prima facie showing that as of 1955, prior to the acquisition of International, King and Greater Buffalo had been engaged in a conspiracy to eliminate competition for a specific customer or customers and to leave each other pretty much alone over-all. Exhibit P-10 is offered as a declaration of a co-conspirator for the sole purpose of establishing or confirming the testimony and to explain the testimony of Mr. Nicht, who referred to this document and said that it refreshed his recollection, and to make the record complete and explain some of the background circumstances this document is offered in evidence.

The COURT: I am not presently satisfied this is the 1374 time to receive that as a declaration of a co-conspirator.

I am going to reserve decision on it. I am not satisfied; 1375 I want to think over all the things you said and the testimony that you have read. I will pass on that.

Mr. STEVENS: May the record show we have an objection, and adopt Mr. Raichle's argument?

The COURT: Yes.

Mr. BERNSTEIN: I will read from the first paragraph of Exhibit 10, which will either be in evidence or as an offer of proof.

The COURT: You don't have to do that; I will either receive it or not. You want to take the part that you consider—

Mr. BERNSTEIN: Yes. "January 4, 1954; memorandum prepared by Frank J. Nicht: 'Walter Koessler phoned me early this morning from Buffalo. He told me he had seen Mr. Bitner regarding the Utica and Binghamton printing. He put in his price for Utica. At the same time he told me he discouraged Bitner from having Greater Buffalo print the Binghamton press run, saying that KFS could handle that better than he could. Koessler told me that Bitner replied, 'That's the way I would like it.''"

1376 Mr. RAICHLE: Could I make an observation there? Koessler is seeking a new customer and he knows the fact to be that the freight rate of the transportation charge from Wilkes-Barre to Binghamton is negligible, whereas to Buffalo it would be substantial. He encourages the customer, in the customer's interest, to take his Binghamton printing from the Wilkes-Barre Plant, he is developing goodwill. I mean, really, you fellows see something sinister in everything that happened. An Indian behind every tree.

The COURT: Of course, the Government contends, from what I heard Mr. Bernstein say, that one isolated thing standing alone might not constitute anything sinister, but he expects, as

1377 I view it from what he said, to pyramid this into a bigger thing. But right now, on what I have heard, I do not consider that the time has come for me to receive P-10 as a declaration of a co-conspirator, and I will reserve decision on that offer.

Mr. BERNSTEIN: Very well, Your Honor.

The COURT: You may offer it again at a proper time, whenever you wish.

Mr. RAICHLE: He offered the document, and as Your Honor said, you are going to reserve on it. I don't think he should read into the record portions of them as if they were in evidence.

The COURT: I take it that you are trying to make a trim record here, that is the purpose of what this is for?

Mr. BERNSTEIN: That is right.

The COURT: You are taking that part of it that you want to make some note of. That would normally be the subject of a brief.

Mr. BERNSTEIN: This is an offer of proof.

Mr. RAICHLE: He identifies the document and offers it; why do we have to pay for having it in the record?

Mr. BERNSTEIN: It is done as an order of proof. I understand, Your Honor, there is going to be a request for an adjournment in this matter and by having it in the record in this fashion, Your Honor will be able to review the transcript and ascertain—

Mr. RAICHLE: Nonsense; I object to this.

The COURT: Well, I think it would be better practice if you offered the document and then if you want to say, "We offer it for paragraph one," or whatever you wish to say, you may do so. The whole document comes in here. I don't think you have to read it into the record.

Mr. BERNSTEIN: Very well, Your Honor. I offer P-11, Your Honor.

The COURT: Same ruling.

Mr. BERNSTEIN: Would Your Honor care to look at the document so that the Court could follow the portion that the Government contends?

Mr. RAICHLE: I object to each document on all the grounds we have urged.

Mr. BERNSTEIN: The Government offers P-11 for the first two paragraphs, and particularly for the next to the last paragraph, and the Government contends that this is an explanation of the testimony of Mr. Nicht. This was prepared by Mr. Nicht. In that paragraph he explains it: "Speaking of Greater Buffalo Press, here are a couple of ways in which our cooperation is worked out."

Mr. RAICHLE: Now he is reading.

Mr. BERNSTEIN: This is the paragraph I am inviting your attention to.

The COURT: You are not offering this as a declaration of a co-conspirator?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: You said it was offered as an explanation for his testimony.

Mr. BERNSTEIN: Offered as a business record.

The COURT: I have ruled on it as a business record, there isn't such a thing in this case. I have ruled this out as a business record under 1732. It either comes in as a declaration of 1380 a co-conspirator or on some other grounds I haven't heard of.

Mr. BERNSTEIN: It is being offered as a declaration of a co-conspirator; it is also being offered as an explanation of the testimony of Mr. Nicht. With respect to that, Your Honor—

The COURT: I don't understand what you mean by that, Mr. Bernstein. Since when do you put in an exhibit to explain the testimony of a witness?

Mr. BERNSTEIN: Well, I'm relying on the decision in the United Shoe Machinery Case 80 Fed. 2nd Sup. 349 at page 355, where Judge Wosanski was referring to the business record rule, and he makes this statement: "The three preceding sections of this opinion have assumed that the hearsay rule is applicable to civil antitrust suits and have shown how far the exhibits would be receivable even if that rule, with its modern exceptions, were applied. But in a civil antitrust suit in which

the Government can secure against a defendant at most 1381 an injunction or order, without monetary damages, the trial Judge is not required to exclude every type of hearsay evidence which would be excluded in other types of cases. While the Supreme Court seems never to have stated that doctrine in those words, the doctrine is implied in what that Court has actually done. It is required to achieve consistency in the application of the antitrust laws by the District Court and by the Federal Trade Commission, and it is essential if the task of finding the facts in governmental civil antitrust proceedings is not hereafter to be taken away entirely from Judges and entrusted exclusively to administrative agencies. As far as this Court is aware, the Supreme Court has never either reversed or criticized a Trial Court for admitting hearsay evidence in a civil antitrust case tried without a jury. In all

Federal antitrust cases do receive, though perhaps on 1382 grounds that would be indefensible in a simple tort or contract case, the intra-mural communications passing between agents of the same corporation." This document is offered on that basis. It is also offered on the authority of—

Mr. STEVENS: When you say "that basis," you mean a business record, don't you?

Mr. BERNSTEIN: Judge Wosanski wasn't referring to the business record rule on that case; he was referring to the discre-

tion of the Court to receive hearsay evidence in the form of documents and give it what weight—

The COURT: I will exercise my discretion. I decline to receive it now and reserve decision on it. It has been offered and I will consider it in the light of the testimony before me now. I am going to consider it purely on the question of whether it now constitutes the admissions of a co-conspirator, not 1383 on the looser grounds that may be talked about in that case.

Mr. BERNSTEIN: It is also being offered for the purpose of showing the intent or motive of Mr. Nicht in his conversation with Mr. Koessler, the document having been identified as a document prepared—

The COURT: His motive and intent as a co-conspirator, you mean?

Mr. BERNSTEIN: Motive and intent, yes, Your Honor.

The COURT: Then I'm still back to the problem; I am not ready to receive that document on the grounds that you have established a prima facie conspiracy, and if you are using it to establish it, I think it is clearly objectionable. It has been offered. I will reserve decision on it. I will probably give you an opportunity to give me a brief on all these offers, each side, if you wish, although I heard everything about it.

Mr. BERNSTEIN: The Government now offers in evi- 1384 dence P-14 as a declaration of a co-conspirator.

Mr. RAICHLE: Same objection.

Mr. BERNSTEIN: There is the original, Your Honor.

Mr. STEVENS: Same objection; I join Mr. Raichle.

Mr. BERNSTEIN: The Government offers it for the first paragraph, which begins: "I am looking forward to talking with you,—" and the third paragraph, which begins: "Lacking certain support which I think should have been given to us,—" it is offered for those two paragraphs.

The COURT: Same ruling.

Mr. BERNSTEIN: The Government offers in evidence Exhibit P-12, and offers that with respect to the first four paragraphs. If you will note, Your Honor, there the document refers to April 21, 1954, and refers to a conversation concerning Lufkin, Texas.

Mr. STEVENS: Objections for both defendants.

The COURT: Same ruling on this.

Mr. BERNSTEIN: The Government also offers it for the new
to the last paragraph on the first page.

1385 Mr. STEVENS: Objection for both defendants.

The COURT: Same ruling on that. Do you contend that King was printing the New Orleans Times Picayune, the Oklahoma City Oklahoman & Times and the Memphis Press Scimitar, and were disturbed about Koessler coming into Lufkin, is that your contention?

Mr. BERNSTEIN: The Government contends that King was very much concerned about losing competition in the South, if Greater Buffalo would open up a Lufkin Plant and King didn't have a plant in the South.

The COURT: You said "losing competition?"

Mr. BERNSTEIN: No; losing business. King was very much—

The COURT: Did they have that business, did King have the New Orleans Times Picayune and the Oklahoma City Oklahoman & Times, and the Memphis Press Scimitar?

Mr. BERNSTEIN: I don't know whether it did or not.
1386 It is the Government's claim, whether it did or not, it was a potential competitor. King was seeking business in the South, all newspapers in the South, but for its agreement with Greater Buffalo. It was seeking all business in the South and King was very much concerned about Greater Buffalo opening a plant in Lufkin and being able to sell cheaper because of the transportation rates, and therefore was planning to open up, through International, a plant in Sylacauga, Alabama, so that it too could sell cheaply in the South and in competition with Greater Buffalo. It is the Government's contention that it made an arrangement with Koessler to eliminate that competition by assisting Greater Buffalo in opening the Lufkin Plant, permitting Greater Buffalo to buy International so that Greater Buffalo would have the plant in Sylacauga, Alabama, with King being the exclusive sales

1387 agent, as part of that arrangement. Then no other seller of color comic supplements should have, in King's view, opportunity to beat them for southern business.

The COURT: Well, I will rule on that exhibit now. I reserve decision like I did on the others.

Mr. MOORE: Our failure to answer Mr. Bernstein's claims should not be—our silence should not—

The COURT: I have no such intention. I am trying to evaluate the evidence before me, as to whether or not under any conceivable concept of anyone it could constitute prima facie evidence of this conspiracy, and I am also interested in the Government's contention, and I am interested in yours too, as to what these letters purport to mean, except they are not in evidence yet, and I don't want to get into prolonged discussion of it. You must remember, gentlemen, you have dealt with this for a much longer time than I have. There are a lot of things in these letters that are complete blanks to me, as far as their meaning and purpose is concerned, from your contention and from the Government's. That is the reason I ask these questions.

1388 Mr. BERNSTEIN: The Government offers P-13 in evidence for the first paragraph: "This memorandum is intended as a final review and summary of the readyprint situation," and for the next to the last paragraph, the first sentence of which reads: "I have been able to make deals with Greater Buffalo Press which I do not think it would be wise to publicize."

Mr. RAICHLE: You insisted on reading that when we had an understanding you were not to. That is the kind of thing that makes us interrupt and object. You did that deliberately, you know you did.

Mr. BERNSTEIN: And page two, the first paragraph.

Mr. STEVENS: It would be easy to count down and designate the paragraphs by number.

1383 Mr. BERNSTEIN: On page two, the first complete paragraph, which begins with the words "In addition," and the second complete paragraph which begins with the word "Furthermore." Page three, the next page, the first full paragraph beginning with the words: "I believe," and the next to the last paragraph which begins with the words "As you know."

Mr. STEVENS: Objection for both defendants.

The COURT: Same ruling.

Mr. BERNSTEIN: The Government now goes to Topic 6.

The COURT: When you said you offered 13, paragraph five, you meant to offer the whole paragraph, not just "I believe"?

Mr. BERNSTEIN: Yes, I was merely identifying that paragraph.

The COURT: All right.

Mr. BERNSTEIN: I am offering the entire document, Your Honor.

The COURT: I understand. I thought you meant the first sentence is all you offered.

Mr. BERNSTEIN: No. The entire paragraph.

The COURT: All right.

Mr. BERNSTEIN: Now, turning to Topic 6, which relates to Buffalo's acquisition of International's stock
1390 It has been stipulated—

The COURT: Mr. Bernstein, as I told you, we have got more time, in fact, a whole day more than I thought we would. I want to talk to Judge Burke on another matter, about his coming up here, possibly. I would like to do it now. If you are going to start a new topic, I am going to recess until two o'clock and we will go on.

(Thereupon, the court was in recess at 12:10 p.m.)
1391 (Proceedings resumed, pursuant to recess, commencing at 2:00 p.m.)

The COURT: Yes, please.

Mr. BERNSTEIN: I now move to Topic No. 6, Greater Buffalo's acquisition of International's capital stock. It has been stipulated in a stipulation of September 24, 1965, paragraph eight that on or about June 25, 1955, Greater Buffalo purchased the outstanding stock of International for \$575,000. It also has been stipulated, paragraph two, prior to June 1955, International was a printer of color comic supplements and maintained a printing plant at Wilkes-Barre, Pennsylvania. It also maintained a printing plant at Peoria, Illinois, until some time after June 1955. It also has been stipulated as Appendix A attached to the stipulation of September 24, 1965—

Mr. STEVENS: What paragraph?

Mr. BERNSTEIN: Page two of the appendix, paragraph four. The International Color Printing Company, known as International, was a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Wilkes-Barre, Pennsylvania. Paragraph one, the same page: "Greater Buffalo, Inc., was a corporation organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, New York." Paragraph number seven: "Greater Buffalo was a printer of color comic supplements and had been a printer

of such supplements since 1933." Paragraph eight: "Greater Buffalo printed color comic supplements at its plant in Buffalo, New York, and had facilities for printing such supplements at Dunkirk, New York. Stipulation number three—

Mr. STEVENS: We are back where?

Mr. BERNSTEIN: Stipulation—excuse me—. Now, we
1393 are on the stipulation dated September 28, 1965, para-
graph I(11): Many newspapers purchased their color
comic supplements from Greater Buffalo directly; generally
pursuant to written contracts for a period of one year, subject
to cancellation by either party for cause on sixty days notice.
Paragraph (14): In 1954 the annual gross receipts for Greater
Buffalo for the sale and printing of color comic supplements
was approximately \$8,613,000. During this same period Interna-
tional's gross receipts for the printing of color comic supple-
ments was approximately \$8,483,000. And in the stipulation
of September 24, 1965, the Appendix to it, page four, para-
graph ten: In the sale of color comic supplements by Greater
Buffalo, the cost of transportation was paid for by the news-
paper customers. In most instances Greater Buffalo advanced

the transportation costs and was reimbursed by the
1394 newspaper customers. Now, the stipulation of Sep-
tember 24, 1965, page two, paragraph four:

King, a Division of the Hearst Corporation, licensed newspaper fea-
ture rights, including the subject matter of comics and sold
color comic supplements to newspapers. King, a Division of
Hearst, did not print the color comic supplements it sold, but
made arrangements to have such supplements printed for its
newspaper customers. However, some newspaper subsidiaries
of the Hearst Corporation did print color comic supplements.
Exhibit 1 in evidence has this paragraph in it: "The com-
pany—" referring to International Color Printing Com-
pany— signed a contract with King Features in 1925 to
print all of the Syndicate's comic supplements. Later on, be-
cause of the distance to Pacific Coast, contract was amended
to read 'At least 75%' of all printing sold by Syndicate.

1395 Original contract, and renewals, were in effect from

1924 to June 1955, when we signed a new contract which
will carry us to 1965 with option for renewal. By that time we
will have been printing King's work for a period of over 41
years." It has been stipulated, paragraph five of the stipulation
of September 24, 1965, on page two: The color comic supple-

ments printed by International for King were shipped directly for King's newspaper customers. Payments for such supplements by the newspapers were made to King pursuant to contract between King and its newspaper customers. Now, the Government offers in evidence Exhibit P-15, which was formerly known as Document 94. P-15 appears to be a document signed by J. W. Koessler, President of Greater Buffalo Press,

Inc., dated June 2, 1955, addressed to Mr. F. J. Nicht, 1396 King Features Syndicate. It is offered in evidence.

Mr. STEVENS: Objection on behalf of NEA.

Mr. BERNSTEIN: I offer it subject to later connection as far as NEA is concerned, Your Honor.

The COURT: Let me read that, will you please? Well, Mr. Raichle, this seems to be a letter of Greater Buffalo Press.

Mr. RAICHLE: I have no objection to the letter. By way of information to Your Honor, not trying to substitute my statement for evidence, there were negotiations along this line that never resulted in a contract. I have no basis for an objection to the letter.

The COURT: You are familiar with the penciled notes all over it?

Mr. RAICHLE: No.

The COURT: Look at the original. I don't know what they say.

Mr. STEVENS: That is one of the bases of my objection.

The COURT: I have no notion what they are. I haven't read them.

1397 Mr. RAICHLE: I have no objection to the document, except as to the penciled notes.

Mr. BERNSTEIN: The document is not being offered for the penciled notes.

The COURT: I suggest that you have that recast and offer it in the typewritten form without the notes, and except for Mr. Stevens' objection on behalf of NEA, it is received. I will receive it against NEA subject to being connected up in some manner.

Mr. BERNSTEIN: Can we have it received without the penciled notes? We will substitute a document without the notes.

The COURT: All right.

(Thereupon, Government's Exhibit P-15, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to paragraph four: "Greater Buffalo Press, Inc., will grant exclusive sales rights to King Features on all runs in excess of 200,000 1398 with the exception of the Philadelphia Bulletin and the Des Moines Register and Tribune." I invite the Court's attention to paragraph five which says: "In the plant which the Greater Buffalo Press, Inc. establishes at Lufkin, Texas, exclusive sales rights will be granted to King Features Syndicate with the exception of the Oklahoma City Times, and the Pappert Group of newspapers." I invite the Court's attention to page two, paragraph six: "The Greater Buffalo Press, Inc., is to be the exclusive printer for King Features Syndicate on runs of 200,000 or more, with the exception of such runs as King Features Syndicate now is contracting to other parties. At the expiration of these contracts, the Greater Buffalo Press, Inc., is to become the exclusive printer. Contracts with International Color Printing Company are excluded from this 1399 provision."

The COURT: Mr. Bernstein, as I understand it, the King people had others, various others, print their papers previously?

Mr. BERNSTEIN: Not at this time, Your Honor. That was the purpose of Exhibit 1. Exhibit 1 in the next to the last paragraph shows the King had all of its printing, virtually all of its printing, done at Greater Buffalo except for that at the—excuse me—King had virtually all of its printing done at International except for that on the West Coast.

The COURT: I was going to ask you; it seems that at one time that King had all of its printing done by others, not doing its own printing, in other words. And it cost them a certain amount of money to do so. After this changeover came about, which you are pointing at, whereby Greater Buffalo was to do the work with few exceptions, what was the cost factor to 1400 King of that? Do you have any figures? Was it Greater?

I'm not talking about inflation; I am talking about comparable cost between when they used to do it at various places and when Buffalo did it?

Mr. BERNSTEIN: I do not concede, Your Honor, that King did have it done at various places. The evidence shows—Exhibit 1 shows that King always had its printing done at International.

The COURT: Take International; were the costs greater or less with Greater Buffalo?

Mr. BERNSTEIN: I am unable to answer that question.

The COURT: It seems to me, I have the impression that you want to create the thought in my mind that King was under pressure to do something here and perhaps unwillingly went along with the Greater Buffalo Press idea. I thought maybe you were pointing to the fact they were paying more, equal or less or something?

Mr. BERNSTEIN: That isn't the point, Your Honor.

The COURT: But it might be interesting to me; if you 1401 don't have it, we will pass on.

Mr. BERNSTEIN: We will try and ascertain that information. The documents that we have here show that King did hope to get the printing for less under Greater Buffalo, printed for less under Greater Buffalo than under International yes. But the contention of the Government, and it submits it for the Court's consideration, is the fact that it was in competition with Greater Buffalo for the sale of printed supplements. It had an arrangement with International in which International was its printer. So everything printed by International in competition with that printed by Greater Buffalo was sold through King. King was then in competition with Greater Buffalo for the sale of those supplements, and the Government's point is that King, having arranged with Greater Buffalo, to eliminate competition between them, then saw no

problem—or rather, as part of the arrangement, did not 1402 impede the sale to Greater Buffalo by International.

Now, the next question might arise, what could King do to impede the sale; it didn't own the stock of International.

The COURT: You told me they were under some pressure, International stockholders.

Mr. BERNSTEIN: The documents that we are offering now, and will offer in the next few minutes, are designed to show Your Honor that King did not sign its contract with International for International to be its printer for a ten-year period of time until it had concluded with Greater Buffalo this deal, as evidenced by the document now before you, P-14—

Mr. STEVENS: P-15.

Mr. BERNSTEIN: P-15, and a few other documents like this, which will be submitted—that it did not conclude that contract until it had all of these things arranged in one ball of wax.

One part of the deal was that Greater Buffalo was to be the sole printer, King was to be the sole seller, whether in 1403 Texas or Alabama or in Wilkes-Barre. Another part of the deal was that Greater Buffalo was to be the sole printer by acquiring International, and as part of that acquisition, King was negotiating a ten-year contract. It is the Government's contention that had King wanted to block the sale, it would not have negotiated a ten-year contract and a contract for newsprint down at the Sylacauga Plant, that all made this very attractive to Greater Buffalo. Now, with respect to Exhibit P-16, formerly known as Document 105—I don't believe Your Honor has a copy of that—P-16 is another letter, appears to be a letter of contract terms between J. W. Koessler of Greater Buffalo Press, Inc., dated June 13, 1955, addressed to Mr. Frank J. Nicht. It is offered, again subject to connection, against NEA.

Mr. RAICHLE: I have no objection to it, except I do 1404 object to Mr. Bernstein's characterization or description of it, if I heard him correctly. It is not a contract. There were some negotiations going forward, as appears from the document, which never resulted in a contract formalizing the negotiations, for reasons which will appear. The document speaks for itself, I have no objection to it.

The COURT: All right.

Mr. STEVENS: Objection on behalf of NEA.

The COURT: Same ruling with respect to NEA. Received. (Thereupon, Government's Exhibit P-16, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the first paragraph of P-16: "These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate and the Greater Buffalo Press, Inc." Then paragraph one is virtually the same as paragraph one in the preceding exhibit, P-15, a similar type of letter dated June 2nd, 1955. Paragraph two is similar to paragraph two of the preceding letter.

Mr. RAICHLE: They speak for themselves.

Mr. BERNSTEIN: I am inviting the Court's attention to these items to show what the Government's claims were with respect to this document. Paragraph nine reads as follows: "For the period of this contract the Greater Buffalo Press, Inc., will contract to print newspaper supplements only for such ac-

counts as it presently holds, and for such new accounts as it is privileged to negotiate and contract under this agreement, and for King Features Syndicate. King Features Syndicate on its part will process all its contracts for printing four color newspaper comic supplements through the Greater Buffalo Press, Inc., and International Color Printing Company. The exception to this provision is the contract which King Features Syndicate holds with the Dallas Times Herald." I am not going to read the next sentence. Paragraph eleven: "The Greater Buffalo Press, Inc., will grant first option to King Features Syndicate to purchase the business of the Greater Buffalo Press, Inc., in the event the Greater Buffalo Press, Inc., offers its business for sale. This contract is to be for a period of ten years."

Mr. RAICHLE: Wait just a second.

Mr. BERNSTEIN: Exhibit P-17 for identification, Your Honor, is another letter dated January 17, 1956, from Mr. Koessler, President of Greater Buffalo Press, Inc., to Mr. Nicht. I offer it in evidence, subject to later connection against NEA.

1407 Mr. STEVENS: We have the same objection.

The COURT: Let me read this.

Mr. RAICHLE: I have no objection to it.

The COURT: Received.

(Thereupon, Government's Exhibit P-17, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: This shows many months later they are still negotiating.

Mr. BERNSTEIN: Document P-17, first paragraph: "I am returning second draft of the proposed contract. The only thing I have changed is the exclusive commitments on the part of both parties. Our attorneys tell us this is dynamite. However, we consider the purpose and direction of our business relations shall be to secure to King Features and the Greater Buffalo Press the contracts and business which they presently hold and to aid and assist each other in securing such other

1408 business as is available, King Features to act as the selling agent and the Greater Buffalo Press as the producer.

In this relation it may develop that the Greater Buffalo Press by mutual consent may be designated to act as negotiator or selling agent. In such cases if the Greater Buffalo Press is successful in securing the account, the Greater Buffalo Press will

pay to King Features a minimum of fifty cents per thousand copies on the account thus secured." It is the Government's contention this document indicates, as of January 17, 1956, although the draft of the formal contract did not have the exclusive commitment on the part of both parties, nonetheless, that it was the intention of Mr. Koessler, and he reiterated to Mr. Nicht that the agreement was nonetheless in effect, as the document indicates.

Mr. RAICHLE: You say the contract? You were aware
1409 the contract never came into existence?

Mr. BERNSTEIN: Exhibit 18—negotiations continue as of October 1956—P-18 for identification is another letter from J. W. Koessler, President of Greater Buffalo, to Mr. F. J. Nicht, King Features Syndicate, dated October 31, 1956.

Mr. RAICHLE: What was the original Document number?

Mr. STEVENS: NEA has an objection to this.

Mr. RAICHLE: I have no objection.

The COURT: I will receive it against NEA, subject to being connected up.

(Thereupon, Government's Exhibit P-18, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to paragraph one: "The Greater Buffalo Press will respect in every manner the comic printing accounts held by King Features Syndicate." Paragraph two: "The Greater Buffalo Press will present King Features Syndicate with a competitive price for its solicitation of new accounts." Paragraph three: "The Greater Buffalo Press will share with King Features, in the manner it has in the past, in the benefits derived from new business which it secures by solicitation on its own account." The Government contends that is some evidence of the preceding arrangement for the allocation of customers between Greater Buffalo and King Features Syndicate. Paragraph four: "Our definition of new business is that which no operator in the comic printing business presently holds."

Mr. RAICHLE: Perhaps this isn't in order, and Your Honor will tell me; he offered and made mention of paragraph two. It says: "The Greater Buffalo Press will present King Features Syndicate with a competitive price for its solicitation 1411 of new accounts." Is it the Government's claim that there is something wrong about that; that that should have been a non-competitive price?

Mr. BERNSTEIN: Does Your Honor wish the question answered? I take it this is a form of an argument or discussion.

Mr. RAICHLE: I was trying to get your theory.

Mr. BERNSTEIN: The document is offered for the purpose of establishing there had been a pre-existing arrangement between Greater Buffalo and King Features Syndicate. This is further evidence of it. The fact they talk about a competitive price is not part of the Government's theory of the evidence. That fact is in the document, the document speaks for itself.

The COURT: All right, you think it is window dressing, that recital?

Mr. BERNSTEIN: Well, the Government contends that obviously then King would never consent to Greater Buffalo robbing it, overcharging it, so when part of the agreement is that the price is going to be the market price, which is synonymous with competitive, the price it means is going to be a fair, reasonable price, and there are all sorts of euphemistic expressions for that kind of pricing.

The COURT: All right.

Mr. BERNSTEIN: The Government now offers in evidence Exhibit P-19 for identification, which was one of the documents that Your Honor has excluded under the business records and excluded as a declaration of a co-conspirator. The Government re-offers it again at this time because it refers to the conversation and transaction. It is offered to elucidate the transaction that Mr. Koessler has referred to in his letter, in the letter to Mr. Nicht.

Mr. RAICHLE: That does not change the character of the document nor the basis for the Court's ruling.

1413 Mr. BERNSTEIN: The Government contends that under an arrangement, or contract, or a deal, whatever word you use to describe it, the intent and motives of the parties is very important. For example, P-17 says that the exclusive commitment is not put in the formal contract, the lawyers tell us this is dynamite. However, we consider this to be part—

Mr. RAICHLE: That is not what it says. Where does it say, "We consider this to be a part of it?"

Mr. BERNSTEIN: We, the Government, consider the document that the Court has in its hand, to be part of this whole transaction, part of this whole arrangement. The intent and purpose and motives of the party are very relevant and per-

tinent to the Court's inquiry. Document P-19 is offered for the purpose of explaining motives and intents of the recipients of the document from J. W. Koessler.

1414 The COURT: I'll make the same ruling I have right along on that.

Mr. STEVENS: May an objection be noted for NEA.

The COURT: What do you consider the second paragraph—what are you going to make of this if it were in evidence, "—with the understanding that the purchase is—" the purchase of what?

Mr. BERNSTEIN: Of International. The Government contends that this is the evidence it would rely on to show that this was all one ball of wax. The purchase of International is contingent on the outcome of the contract between King and Greater Buffalo. That was just offered in evidence.

The COURT: The same ruling I have made on all documents of this class, that I reserve decision on the offer.

Mr. BERNSTEIN: Again—

The COURT: Let me ask you; what do you recall the background of that particular document is as to where it was found? Is that one of the desk documents?

Mr. BERNSTEIN: Yes, Your Honor.

1415 The COURT: All right.

Mr. BERNSTEIN: The Government now offers in evidence a document which has been excluded under the business records and co-conspirator rule; P-20, which has been identified as an April 13, 1955, memorandum by Frank J. Nicht, which the witness described as having been in the desk drawer of Mr. Nicht, and it is offered for the same purpose, again, to show the intent and motive of the parties. Inviting the Court's attention to the first paragraph: "These are the basic conditions on which a deal with GBP would hinge," and then the thoughts and observations and operations of the mind of Mr. Nicht to show his intent and his motive in connection with the execution of the contract that will later be offered in evidence.

Mr. STEVENS: Objection for both parties, all parties.

1416 Mr. RAICHLE: This is probably the most clearly incompetent of all of them.

The COURT: I didn't hear you.

Mr. RAICHLE: I beg your pardon. It seems to me this is the most clearly incompetent of all. It is the one I picked to illus-

trate the musings: "Why is he so difficult to reach?" "What happened to his AP printing?" "Why does he stir things up in Texas?"

Mr. BERNSTEIN: I invite the Court's attention to the first paragraph—

Mr. RAICHLER: Well—oh, well, I assume Your Honor is going to rule.

The COURT: I have no problem in ruling! I am going to make this same ruling I have made in all instances. I am reading it thoroughly for the first time.

Mr. BERNSTEIN: Exhibit P-21 is another one of the documents in the same category as Exhibit P-20, and the Government offers it in evidence. This is with respect to the next topic, Topic 8; that general topic is that had King chosen to do it, it could have prevented Greater Buffalo from 1417 acquiring International. I invite the Court's attention to the first paragraph of that document.

Mr. STEVENS: Objection on behalf of all defendants. We are now on Topic 8?

Mr. BERNSTEIN: That is correct. I also invite the Court's attention particularly to page 2, the paragraph starting "Regarding No. 3:"

Mr. STEVENS: May I ask again what paragraph you are referring to?

Mr. BERNSTEIN: Page two.

The COURT: I will make the same ruling on that, Mr. Bernstein. Did you have those letters in your possession at the time you took the deposition of Nicht?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: Was he confronted with these?

Mr. BERNSTEIN: Yes, Your Honor. The deposition—

The COURT: I just asked whether you made something of these with these letters with the author?

Mr. BERNSTEIN: Yes, Your Honor.

1418 The COURT: All right, I will wait for that.

Mr. BERNSTEIN: Perhaps this would be a good time to put that in, as to what was done with that.

Mr. RAICHLER: What is he talking about?

The COURT: Don't change on account of me. It seemed to me if you had letters like this that you claim show conspiracies, a conspiracy, that you would want to meet one of the agents,

one of the principals head-on and ask him to explain what he was talking about.

Mr. BERNSTEIN: At the time the deposition was taken, Mr. Nicht was in very poor health, as Mrs. Lutz indicated yesterday.

The COURT: Maybe it wasn't done, I don't know. Here is some stuff that you claim is made by one of the key agents of one of the principals, found in his own files. I would assume that you would have confronted him with those when you were examining him. Maybe you didn't.

Mr. BERNSTEIN: That is—well, yes, he was examined in connection with it.

1419 The COURT: I don't look for it now if you have other things to go on to. I have that question in my mind.

Mr. BERNSTEIN: I will answer the question tomorrow morning, if the Court please.

The COURT: All right.

Mr. BERNSTEIN: Exhibit P-22 is another document that has been identified by Mrs. Lutz and refused in evidence on the grounds of business records and a declaration of a co-conspirator. Again, this is re-offered at this time for the purpose of showing the purpose and the motives and ideas of the parties. I invite the Court's attention to the first three paragraphs.

Mr. STEVENS: Objection on behalf of all defendants.

Mr. BERNSTEIN: It has been stipulated that Mr. Berlin was the President of Hearst on July 21, 1954, and that Mr. Gorbatowsky was the Chairman of Hearst Subsidiaries on that date.

The document is being offered for the fourth from the 1420 last paragraph on the first page.

Mr. RAICHLE: What? I couldn't hear you.

Mr. BERNSTEIN: The fourth from the last paragraph on the first page, also the first full paragraph on page two.

Mr. STEVENS: If I haven't lodged an objection against this document on behalf of all defendants, I do.

The COURT: Same ruling, Mr. Bernstein.

Mr. BERNSTEIN: Document P-23 for identification is a different category than the preceding exhibit. It appears to be a contract between—the first page is a letter of transmittal of an agreement and the second page and following pages consist of an agreement between King Features Syndicate and Interna-

tional Color Printing Company, dated July 30, 1955. Both of these documents are offered in evidence.

Mr. STEVENS: Objection for both defendants.

The COURT: Is this a contract that came into being?

Mr. BERNSTEIN: Yes, Your Honor. The Court's attention is invited to the first paragraph: "Attached are three signed copies of agreement dated July 30th. I presume you will sign and return one copy for our files." Then going to the agreement on the second page, it is an agreement made, "This 30th day of July 1955, at the City of New York, State of New York, between King Features Syndicate, Division of the Hearst Corporation, hereinafter called 'Syndicate' and International Color Printing Company, hereinafter called 'International' FIRST: The term hereof shall be for a period of ten years beginning on the 31st day of July 1955, and shall thereafter renew itself for like periods unless either party notifies the other by registered letter at least two years before the end of any said periods of its desire to terminate this agreement.

SECOND: International, at its plants in Wilkes-Barre, Pennsylvania, or Peoria, Illinois, or at other plants which may later be operated by it, will print and prepare for shipping to the various clients designated by the Syndicate those quantities of colored supplements as the Syndicate may order. The total of such supplement printing shall be a minimum of 75% of the Syndicate's supplement printing requirements, except as provided in Paragraph sixth, or when both parties agree mutually to a lower minimum. All supplement pages will be printed with four colors, or less, as designated by Syndicate." I discontinue reading on that page, and go to page two, paragraph four: "While International is printing at least the minimum percentage of Syndicate's supplement printing requirements as outlined in paragraph second above, International agrees that it will not produce or print comic supplements for any organization other than the Syndicate, and in no event without the written consent of the Syndicate."

Mr. RAICHLE: I have no objection to this.

The COURT: Received against both defendants here, subject, of course, to being connected with NEA somehow. How do you expect to connect that with NEA? Do you claim there is a supplemental contract with NEA?

Mr. BERNSTEIN: As far as NEA is concerned, this document—the Government's contention is if the conspiracy is established by other evidence, and if it is established later that NEA joined the conspiracy, then the Government's contention is that all acts or declarations of its so-called partners, as it were, made during the period of that conspiracy, relating to the conspiracy, are also receivable as against NEA.

(Thereupon, Government's Exhibit P-23, previously marked for identification, was received and marked in evidence.)

1424 Mr. BERNSTEIN: P-24, Your Honor, is another one of the documents excluded before, but the Government renews its request at this time and offers it as a business record under the specific grounds that Mrs. Lutz identified this as a salesman's bulletin, one routinely, continuously issued by Mr. Nicht to salesmen. It would be a memorandum made in the regular course of business.

The COURT: I excluded it on that ground, I make the same ruling on the other ground sought.

Mr. BERNSTEIN: Now, going to Topic 9, Your Honor, to prove that King and NEA were competitors prior to November 1955. It has been stipulated—I'm referring now to the stipulation dated September 28, 1965, paragraph 13: "Prior to June 1955 King's competitors in the sale of color comic supplements to newspapers included Greater Buffalo, NEA,
1425 Eastern Color Printing Company, World Press, Inc., Eastern Color Press, Inc., and Acme Color Print Company, as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955." The Government now offers in evidence portions of the deposition of Mr. Nicht taken on March 20, 1961, page 26, line 12—

Mr. RAICHLE: Start at the top of the page.

Mr. BERNSTEIN: Top of page 26. This is the direct examination of Mr. Nicht:

"Q. Were there any other competitors competing with King Features Syndicate?

"A. I think Star Color Printing Company at Wilmington, Delaware.

"Q. Did Star, to your knowledge, actually print the color comic supplements?

"A. Yes, sir."

Mr. RACHLE: Excuse me, don't you think you ought to start on the page before if you are going to paint a competitive picture; start with line 6 on page 25.

1426 Mr. BERNSTEIN: Line 6, page 25:

"Q. I asked you to name your competitors in 1954. I now ask you whether you considered in 1954 World Color to be a competitor?

"A. I think so.

"Q. Did World Color, to your knowledge, solicit accounts which you or King Features was interested in or was then servicing?

"A. I don't know just how they operated on sales.

"Q. What were the facts which then indicated to you that World Color was a competitor?

"A. We lost a few runs to them.

"Q. Where were these runs situated?

"A. I think they were in the central territory.

"Q. Do you recall the circumstances or the names of these particular runs?

"A. No, I don't.

"Q. Do you recall the circumstances under which you lost those runs?

"A. I'm not clear on that point.

"Q. Were there any other competitors competing with King Features Syndicate?

"A. I think Star Color Printing Company at Wilmington, Delaware.

"Q. Did Star, to your knowledge, actually print the 1427 color comic supplements?

"A. Yes, sir.

"Q. To your knowledge, did they have salesmen or people soliciting accounts?

"A. I think so.

"Q. Going back to 1954, which of the companies listed by you did you consider to be your leading or keenest competitors?

"A. Greater Buffalo.

"Q. Going down the line as far as competition was concerned, who would follow?

"A. NEA.

"Q. After NEA/?

"A. I mentioned those before—Chicago Tribune, United Features, Eastern Color. That is about it."

Mr. STEVENS: Continue.

Mr. RAICHLE: Just the next question and answer.

Mr. BERNSTEIN: Line 22:

"Q. When you mentioned the Chicago Tribune, in other words, in 1954 you considered the Chicago Tribune to be a competitor of King Features?

"A. Yes, sir.

"Q. To your knowledge, did Chicago Tribune at that time actually print color comic supplements?

1428 "A. No, sir.

"Q. Do you know the source of the Chicago Tribune's supply of color comic supplements which they sold in competition to King Features Syndicate?

"A. I believe it is Greater Buffalo.

"Q. The other syndicate you mentioned—

"A. United Features.

"Q. Do you know whether at that time United Features actually printed color comic supplements?

"A. I don't know about that time.

"Q. Do you know at any time whether United Features printed color comic supplements?

"A. They, I believe they had some of their supplements printed at Buffalo Color Plant or the Buffalo Color Press, or whatever you call it.

"Q. Then you don't know whether United Features ever itself did the physical printing of the color comic supplements?

"A. No, they didn't do it themselves.

"Q. In other words, you are able to state to your knowledge they didn't do it?

"A. That's right.

"Q. They were, like King Features, a sales agent, and they bought it and re-sold it?

"A. That's right."

1429 Exhibit P-25 for identification, Your Honor, appears to be a letter from Frank J. Nicht to Mr. J. W. Koessler, President of the Greater Buffalo Press, marked confidential, dated August 17, 1955, and it is offered in evidence.

Mr. STEVENS: Please note an objection for NEA.

Mr. RAICHLE: No objection.

The COURT: You say you have no objection to it?

Mr. RAICHLE: No.

The COURT: All right, received. I will note your objection, subject to being connected up to NEA.

(Thereupon, Government's Exhibit P-25, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The Court's attention is particularly invited to the first paragraph: "Dear Walter: I am sure you must have realized that with the consummation of our 1430 different negotiations our contacts would very likely become of more and more frequent occurrence and that's just the way it seems to be working out. Almost every-day situations and problems arise. Of course, I will try not to bother you with any in which you are not directly concerned." I will skip to the third from the last paragraph which reads: "Situations such as this bring up again the matter of what to do about NEA. I think you and I are beginning to see eye-to-eye in this respect, but NEA is competition, and bad competition because they'll use anyone in the furtherance of their own interest. Consequently, I hope we can strike upon some plan which would make it possible for you to retain what NEA printing you have, but eliminate NEA in the process." With respect to P-26 for identification, formerly known as Document No. 92, which appears to be a letter from J. W. 1431 Koessler, President, Greater Buffalo Press, to Mr. Frank J. Nicht, dated August 22, 1955, the Court's attention is—

Mr. STEVENS: There is an objection on behalf of NEA.

The COURT: You have no objection, Mr. Raichle, I take it?

Mr. RAICHLE: I have no objection.

The COURT: Received. Received against NEA, subject to being connected up.

(Thereupon, Government's Exhibit P-26, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: There is some handwriting here.

Mr. BERNSTEIN: It is not offered for the handwriting; it is offered particularly for the first three paragraphs. It has been stipulated, page 8 of the Appendix to Stipulation, dated September 24, 1956, it has been stipulated: "That from January 1, 1954, to April 3, 1958, that Herbert W. Walker was 1432 Vice-President of NEA." The document is written on August 22, 1955, during that period, and it reads as follows: "I told you on the phone——" this is from Koessler to Nicht—Herbert Walker has been identified as Vice-Presi-

dent—"Dear Frank: I told you on the phone of my conversation with Herb Walker and I think he is convinced that he is getting nowhere in his present operation." The third paragraph: "I think something will come of this in the next few weeks and abeyance from that source will be removed." It has been stipulated, going to Topic 10, that Greater Buffalo and NEA were competitors in the sale of color comic supplements to newspapers prior to October 1955. It has been stipulated in the stipulation of September 24, 1965, paragraph seven, page three: "Prior to 1955 Greater Buffalo's competitors in the sale of color comic supplements to newspapers included King, NEA, as well as others. The parties are in disagreement as to whether the foregoing was true after June 1955." Going to Topic 11, Greater Buffalo eliminated competition with NEA when it agreed to purchase Buffalo Color Press, Inc. It has been stipulated in the Appendix to the stipulation of September 24, 1965, on page two, paragraph three—

Mr. STEVENS: This appendix seems difficult for me to find.

Mr. BERNSTEIN: Excuse me, Your Honor. I am talking about paragraph three. It has been stipulated that: "Newspaper Enterprise Association, Inc. (NEA) was a corporation organized and existing under the laws of the State of Delaware, with the principal place of business in Cleveland, Ohio. NEA was a subsidiary of the E. W. Scripps Company." It has been stipulated,

paragraph eighteen of the same document: "NEA licensed newspaper feature rights, including the subject matter of comics and sold color comic supplements to newspapers at least from 1955 to 1961. NEA itself did not print the color comic supplements which it sold, but had such supplements printed by Buffalo Color Press, Inc., and other comic printers." Paragraph nineteen: "Buffalo Color Press was a printer of color comic supplements and maintained a printing plant in Buffalo, New York, until a short time after October 1955." Paragraph twenty: "Until its liquidation in 1956, Buffalo Color Press was a subsidiary of NEA. NEA handled the sale to newspapers of the majority of the color comic supplements printed by Buffalo Color Press prior to October 1955." The Government now submits P-27 for identification which was formerly known as Document 14. P-27 for identification purports to be a contract between Greater Buffalo Press, Inc., and Buffalo Color Press, Inc., this is offered as against both defendants, Your Honor.

Mr. STEVENS: There is no objection by NEA.

Mr. RAICHLER: I have none.

The COURT: Received.

(Thereupon, Government's Exhibit P-27, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the first page, addressed to Greater Buffalo Press, Inc.: "Gentlemen: This letter sets forth the agreement we have made with you with respect to our plant in Buffalo, New York, and the supplement printing now being done in that plant. 1(a) We agree to sell to you and you agree to buy from us all the machinery, equipment, spare parts, supplies, furniture, fixtures and other

tangible personal property located in our plant at 52-54
1436 Carroll Street, Buffalo, New York (which we will call

'our Buffalo Plant') on the closing date specified in this agreement. We also agree to sell to you and you agree to buy from us all the newsprint paper and ink we have in storage at the Grant Terminal Warehouse, foot of Commercial Street, Buffalo, New York, on the closing date. 1(b) For the above, you agree to pay us the sum of \$25,000 in cash, plus an amount equal to our cost on all newsprint paper in rolls, ink in drums, metal and supplies in our Buffalo Plant and in storage for us at the Grant Terminal Warehouse, Buffalo, New York, on the closing date. The 'closing date' under this agreement shall be January 14, 1956, or such other date as you and we may mutually agree upon." Now, turning to page two, and before reading

paragraph three, it has been stipulated in the stipulation dated September 24, 1956, paragraph six, as follows:

"NEA at one time was known as NEA Service, Inc. In 1955, United Features Syndicate, Inc., was a wholly owned subsidiary of United Press Association of New York, and during 1955, United Press Association of New York became a wholly owned subsidiary of E. W. Scripps Company." I digress; Your Honor recalls there was mention made of United Features Syndicate in Nicht's deposition when asked about competitors, and this paragraph of the stipulation refers to the relationship of the United Features Syndicate, Inc., to NEA. Paragraph three—I am resuming my reading from P-27, the agreement between Buffalo Color Press and Greater Buffalo Press, Inc.: "We agree to turn over to you on the closing date all our supplement printing for the following named customers:

1438 NEA Service, Inc., of Cleveland, Ohio, a named customer—" I am not reading the next few words—

"United Features Syndicate, Inc., of New York—"

I am deleting some words—"United Press Association of New York, New York—" I am deleting some words—"The Chicago Daily News of Chicago, Illinois; The Columbus Citizen of Columbus, Ohio; The Indianapolis Times of Indianapolis, Indiana; The Knoxville News-Sentinel of Knoxville, Tennessee; The Evansville Courier-Press, of Evansville, Indiana; and their respective successors and assigns (all of which we will call the 'named customers')." Paragraph four: "You agree to do supplemental printing on order from any or all of the named customers at your established schedule of rates—"

there is an exception, subject to an exception, I won't read that.

Then on page four, paragraph five: "Supplement printing under this agreement will be done at the one of your

1439 plants which has the most economical shipping charges

for the particular newspaper for which the work is done, unless work is being done for a newspaper which receives a supplement which is part of a readyprint run going to more than one newspaper, and, in that case, the printing shall be done at the one of your plants which has the most economically combined shipping and printing cost for that particular readyprint run. Printing may be done now at either your plant in Buffalo, New York, or your plant in Dunkirk, New York. Your new plants, now being constructed at Lufkin, Texas, and Sylacauga, Alabama, and any other plants which you may construct or which may become available, shall be used for work under this agreement when such work can be advantageously produced at and delivered from any of those plants."

Page five, paragraph six: "In consideration of the

1440 supplemental printing turned over to you under this

agreement, you agree that you will pay us or our nominee an amount to be determined and paid as follows: (a) For each 1,000 copies of any standard page size supplement produced by you for any of the named customers, you shall pay us the sum of $6\frac{1}{4}$ ¢ multiplied by the number of pages in the supplement." I am omitting reading the rest of that page. Going to page 6, paragraph eight: "This agreement shall continue in effect for ten years from the closing date and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either Mr. J. W.

Koessler or Mr. Kenneth Koessler is associated or has a stock interest, continues to do supplement printing in the United States of America." P-28 for identification, Your Honor, is another contract in the form of a letter between NEA
 1441 Service, Inc., dated October 20, 1955, and the Greater Buffalo Press, Inc.; it is offered in evidence against both defendants.

Mr. STEVENS: No objection for NEA.

Mr. MOORE: We have no objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-28, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Paragraph one of the letter states as follows: "This letter sets forth the agreement we have made with you with respect to new customers for supplement printing which we may hereafter secure for you. 1. You agree to do supplement printing on orders we secure for you either from or for the account of customers who are not now on your books. When any such order secured by us and delivered to you, the customer and the successors and assigns of the customer from, or

1442 on whose account, the order was secured shall thereafter be known as and is hereinafter called 'a new customer.'

You agree to keep a list of the new customers we secure for you and to confirm to us when each new customer is added to that list. 2. You agree that you will do supplement printing for the new customers at your established schedule of rates——" this is subject to an exception, which I won't read.

I skip to page three, paragraph three: "Supplement printing under this agreement will be done at the one of your plants which has the most economical shipping charges for the particular new customer for which the work is done, unless work is being done for a new customer which receives a supplement which is part of a readyprint run going to more than one newspaper, and, in that case, the printing shall be done at the one

of your plants which has the most economically combined shipping and printing cost for that particular readyprint run." I won't read the rest, it is similar to the paragraph in the preceding exhibit which refer to the printing for existing customers. Then paragraph four states: "In consideration of the new customers we secure for you and of the supplement printing you may do for those new customers, you agree that you will pay us or our nominee an amount to

be determined as follows:——" then the same rate is set forth in paragraph four as in the preceding contract. And on page four, paragraph five: "This agreement shall take effect on January 16, 1956, or such later date as you and we may mutually agree upon and continue in effect for ten years and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either
 1444 Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or has a stock interest, continues to do supplement printing in the United States of America."

Mr. STEVENS: If the Court please, several times Mr. Bernstein said such and such a paragraph was the same as the previous exhibit. I don't know whether that is a fact or not. Of course, the documents speak for themselves. I wouldn't want to be excepting to something if, in fact, it wasn't.

The COURT: Yes.

Mr. BERNSTEIN: Now, Government's Exhibit P-29, formerly known as Document 25, appears to be a letter from L. E. Herman, Vice-President. It has been stipulated at the Appendix to stipulation of September 24, 1965, that Mr. L. E. Herman—

Mr. RAICHLE: There is no objection.

Mr. STEVENS: No objection to this letter.

The COURT: Received.

1445 (Thereupon, Government's Exhibit P-29, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: It has been stipulated that Mr. L. E. Herman was President of Buffalo Color Press, Inc., from January 1, 1950, to March 17, 1956; and Vice-President of Greater Buffalo Press, Inc., from March 1956. The document is written March 8, 1956, and signed by Mr. Herman as Vice-President, and it is addressed to a newspaper syndicate, and it is offered for the purpose of evidencing that the transaction was consummated. Exhibit P-30 for identification, May 4, 1956, memo to L. A. Bertoli, with the initials HWW. We have a stipulation concerning who HWW was. I offer the document in evidence. This is offered for the purpose of showing that the contract was implemented.

1446 Mr. STEVENS: No objection from NEA.

The COURT: Is that offer against Greater Buffalo?

Mr. BERNSTEIN: It is offered for the purpose of showing that the contract was implemented.

Mr. RAICHLE: I think I will note an objection to that, unconnected with us. Actually, I think it is. I'm not too serious about it; go ahead.

The COURT: All right, received.

(Thereupon, Government's Exhibit P-30, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: It has been stipulated in paragraph eight that the initials HWW in Exhibit P-30 indicate this document was either prepared by or under the supervision of Herbert W. Walker. It has been stipulated that at the time of this document Mr. Walker was Vice-President of NEA, Vice-

President of Buffalo Color Press, and it is merely
1447 offered to show that the contract was implemented. P-

31, Your Honor, is also offered for the same purpose. It appears to be a document with the initials EHA, dated June 8, 1956. It has been stipulated that the memorandum was to Ned Mills, Sales Representative of NEA, and that the initials EHA indicate that the document was prepared by or under the supervision of Earl H. Anderson. It has been stipulated at that time he was Vice-President of Buffalo Color Press, and at that time that the initials—it has been stipulated that William H. Borglund was a director of NEA during the period when this document was executed.

Mr. STEVENS: No objection for NEA.

Mr. RAICHLE: No objection.

The COURT: Who is Ned Mills?

Mr. BERNSTEIN: Ned Mills is a Sales Representative of NEA. This is from the Vice-President of NEA to his
1448 sales representative advising that it says: "We were delighted to get your wire this morning advising that you had made a new printing arrangement for the Lindsay-Schaub papers at our suggested rate." Then it urges it is confidential at the bottom, a blind to—a blind copy, that is, to other members of the NEA organization: "In addition, we will have royalties of \$54 per thousand coming from Greater Buffalo Press on this run."

(Thereupon, Government's Exhibit P-31, previously marked for identification, was received and marked in evidence.)

The COURT: We will take a short recess.

(Thereupon, the court was in recess at 3:25 p.m.)

1449 (Proceedings resumed, pursuant to recess, commencing at 3:50 p.m.)

The COURT: Yes.

Mr. BERNSTEIN: P-32 for identification, Your Honor, formerly known as Document 77, appears to be a letter from Mr. Koessler, dated December 5, 1956, to Earl H. Anderson, NEA Service. I offer the letter in evidence.

Mr. RAICHLE: No objection.

Mr. STEVENS: Just a moment, please? No objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-32, previously marked for identification, was received and marked in evidence.)

1450 Mr. BERNSTEIN: The letter reads: "Dear Earl: We have a man, Fred Jerauld by name, who is working out of Lufkin, on the larger Southwest accounts, and Albuquerque, New Mexico, is one of these. We have to get these larger papers on our own to keep the general over-all price in line so we can come out okay. Kenneth says he talked to you on this and we will have a meeting to outline the accounts we wish to keep as our private preserve. It is my understanding that the Albuquerque Journal is not a Scripp paper. The Scripp paper, of course, is yours if you can sell them a comic section." P-33 for identification, formerly Document 45, appears to be a sales report of NEA representative R. C. Whitehead, dated March 29, 1957. This document is offered at this time solely with respect to NEA and will be re-offered at a later time with respect to Greater Buffalo as part of a declaration of a co-conspirator. At this time it is being offered solely against NEA as an admission.

Mr. STEVENS: We have no objection.

The COURT: Received.

1451 Mr. BERNSTEIN: I'm particularly inviting the Court's attention to the third and fourth paragraph.

The COURT: All right.

(Thereupon, Government's Exhibit P-33, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The third and fourth paragraphs: "I have talked with Cleveland this week and pointed out to Earl Anderson and W. H. B. that I think we are justly entitled to negotiate a contract with the Times-Union over and above Greater Buffalo Press—since we had been working with, and making frequent calls on Millar, encouraging him to discontinue his

printing, and permit us to take over the job." It has been stipulated that William H. Borglund was Vice-President of NEA from July 27, 1955, to January 1, 1961. I resume my
 1452 reading: "I feel that whether we negotiate the contract or whether Greater Buffalo Press negotiates the contract, and allows us 75¢ per thousand profit—in either case it should be made known to Greater Buffalo Press we expect to participate in this account." P-34, Your Honor, for identification, formerly Document 75, is a letter dated December 3, 1957, with the initials WHB, which has been stipulated was prepared by or under the supervision of William H. Borglund, who just has been identified, a memorandum to Ned Mills, who it is stipulated is a sales representative of NEA. This document too is offered as against NEA as an admission and will later be offered as against Greater Buffalo under the co-conspirator rule, we are relying particular on the first paragraph, Your Honor.

Mr. STEVENS: May I have a moment to read it, please?
 1453 No objection from NEA.

The COURT: Received.

(Thereupon, Government's Exhibit P-34, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Now, turning to Topic No. 12; at Greater Buffalo's request, King met with NEA and Greater Buffalo and agreed that NEA and King would not solicit each other's accounts. We offer in evidence the deposition of Frank J. Nicht, taken on March 20, 1961, page 137, line 13:

"Q. Was the sale of the outstanding stock of International Color Printing Company to Mr. Koessler or to Greater Buffalo Press consummated, as far as you know?

"A. Yes, sir.

"Q. What happened at that time or thereafter in regard to your original interest in King Features Syndicate becoming the selling agency or exclusive sales agent for Greater Buffalo Press?

1454 "A. That we wanted to happen.

"Q. Pardon me, I didn't hear that.

"A. That we wanted to happen. We wanted to be exclusive sales agents for Greater Buffalo Press.

"Q. Did that ever come to pass?

"A. No, sir.

"Q. Thereafter, and I am talking about after the physical sale, did you, on behalf of King Features Syndicate, take any steps to become the exclusive sales agent for Greater Buffalo Press?

"A. Yes, sir.

"Q. What steps, if any, did you take?

"A. We talked about certain situations. We began to talk about a contract that would cover our arrangement for selling.

"Q. Going back to the period before the actual sale took place, in your discussions with Mr. Koessler, was any agreement or understanding reached at that time in regard to King Features Syndicate becoming the exclusive sales agent for Greater Buffalo Press?

"A. Do you mean before the purchase by Mr. Koessler?

"Q. Yes. I am talking about oral understanding now.

1455 "A. Yes, I think that was touched upon.

"Q. When I say 'understanding,' I mean did Mr. Koessler indicate to you that he would want, or would permit King Features Syndicate to become the exclusive sales agent for Greater Buffalo Press?

"A. He gave me hope for that.

"Q. When you say 'hope,' did he tell you it would happen?

"A. He indicated we could make a deal.

"Q. Thereafter you say you had discussions and correspondence with Mr. Koessler in that regard, and I speak now of the period after the actual sale; is that right, sir?

"A. Yes.

"Q. How far did those discussions proceed?

"A. I think that is pretty well covered by certain letters that Mr. Koessler wrote to the Syndicate.

"Q. At this time, Mr. Nicht, I show you Plaintiff's Exhibit 6-A—"which is P-16 in this action"—"and Plaintiff's Exhibit 6-C—which is P-15 in this action"—and ask you whether these two exhibits, which are also directed to you from Mr. Koessler, contain the substance of the representations he made to you at the time in regard to King Features Syndicate becoming the sales agent for Greater Buffalo Press?

"A. Yes, sir, they do.

"Q. At the time the stock of International Color Printing was purchased by Greater Buffalo Press, was Buffalo Color Press in business?

"A. Yes.

"Q. Do you know whether it operates today and is in business?

"A. I don't think it does.

"Q. When did you first learn that it had ceased doing business?

"A. After the deal was consummated.

"Q. When you say 'deal was consummated,' you mean the deal for the purchase of the stock of International Color Printing?

"A. Yes, after—no. Let me put it this way: I learned about that sale after the deal was made between Greater Buffalo Press and Buffalo Color.

"Q. Was this after, though, the sale of the stock of International Color Printing to Greater Buffalo Press?

"A. Yes.

1457 "Q. Prior to your learning about the sales of Buffalo Color Press to Greater Buffalo, did you have any knowledge that Greater Buffalo was going to buy Buffalo Color Press?

"A. I did not, sir.

"Q. When you heard about the sale taking place, then, am I correct in stating that was the first knowledge you had that any arrangements had been entered into?

"A. Yes, sir."

Now, I return to page 70, line 25:

Mr. RAICHLE: You are going backwards?

Mr. BERNSTEIN: Going backwards.

Mr. RAICHLE: Very confusing.

Mr. STEVENS: Page 70?

Mr. BERNSTEIN: Page 70, line 25:

"Q. Directing your attention to the Fall of 1955, was NEA at that time a competitor of King in the sale of color comic supplements?

"A. Yes, sir.

"Q. Do you know the person who at that time was president or head of the NEA?

"A. I don't know what their official set-up was.

"Q. Who is the person, as far as King was concerned, who directed or had final authority, to your knowledge, in running NEA?

"A. Mr. Walker.

1458 "Q. What is his full name?

"A. I don't know his first name.

"Q. But it is Mr. Walker; is that correct?

"A. I believe so.

"Q. Prior to the Fall of 1955, did you ever meet with Mr. Walker?

"A. No, sir.

"Q. Thereafter, did you ever meet with Mr. Walker?

"A. Once.

"Q. Do you remember when that meeting took place, sir?

"A. It could have been in 1955, the last part of the year.

"Q. Would it be around November or December?

"A. That is about it, around there.

"Q. In other words, you are not positive?

"A. I am not positive, no, sir.

"Q. You are able to state that it was the last part of 1955?

"A. That is right.

"Q. Where did you meet with Mr. Walker?

"A. In a hotel on Lexington Avenue.

"Q. Were there any other people present?

"A. Three others that I can think of.

"Q. Who were they?

"A. Mr. Koessler.

1459 "Q. Is that Walter Koessler?

"A. Walter Koessler.

"Q. At that time what company was he associated with?

"A. Greater Buffalo Press.

"Q. Who else was there?

"A. Mr. Walker and Mr. Anderson, I believe.

"Q. What company, if any, was Mr. Anderson associated with?

"A. NEA.

"Q. Was anyone else present, other than yourself?

"A. I can't remember.

"Q. When you say 'meeting,' do you recall whether that was a meeting that took place on one day or did it extend over one day?

"A. Just the once.

"Q. How long did that meeting last, sir?

"A. I don't know.

"Q. Will you please tell us the circumstances as to how you came to meet with Mr. Walker at this hotel on Lexington Avenue?

"A. It's my recollection that Mr. Koessler called me up and told me that they were there and wanted me to come over.

1460 "Q. When did you receive that call from Mr. Koessler? Was that immediately prior to the meeting or sometime before the meeting?

"A. I think immediately prior.

"Q. Would that be the same day when the meeting took place?

"A. I think so.

"Q. Do you recall whether the meeting took place in the morning or in the afternoon?

"A. I think it was in the afternoon.

"Q. Do you recall the name of the hotel on Lexington Avenue?

"A. Beverly.

"Q. I want your recollection. You say it is the Hotel Beverly?

"A. Beverly.

"Q. In what room at the hotel did you meet with Mr. Walker and the other people you just mentioned?

"A. I don't know. Did you say what room?

"Q. What room or suite?

"A. It was a suite—two rooms, so far as I know.

"Q. Did you know at the time to whom the suite belonged?

"A. No, I didn't.

1461 "Q. Did Mr. Koessler in the telephone conversation you just related to us indicate to you all the people whom you subsequently found to be at the meeting?

"A. I don't recall that.

"Q. At any rate, did you attend a meeting?

"A. That's right, sir.

"Q. That was the same afternoon?

"A. That's right."

Now, unless there is an objection, I propose to skip to page 8
Mr. RAICHLE: I would like the rest of the page read.

Mr. BERNSTEIN: Line 21:

"Q. Would you please tell us now the substance of the discussion that took place at that meeting?

"A. I am very hazy on what went on at that meeting. I have very little recollection concerning it.

"Q. Without going into the specific details, what was the general discussion there? I am not interested in the individual words each person said, but the substance of what took place.

"A. Again, I have to say that I am very hazy on that point. It was a meeting called at no instigation of ours. Maybe to get me acquainted with Mr. Walker or something like that, whom I hadn't met before, at least not to my knowledge."

1462 Mr. RAICHLER: All right.

Mr. BERNSTEIN: Skipping to page 80, line 4:

"Q. At this meeting that took place in the last part of 1955 at the hotel on Lexington Avenue, was there any discussion at that meeting relating to the printing of color comic supplements for NEA—"

Mr. STEVENS: Wait, please, you are going too fast. You said line 4?

Mr. BERNSTEIN: I'm sorry, line 14.

Mr. STEVENS: All right.

Mr. BERNSTEIN: Line 14:

"Q. At this meeting that took place in the last part of 1955 at the hotel on Lexington Avenue, was there any discussion at that meeting relating to the printing of color comic supplements for NEA?

"A. I don't remember.

"Q. Was there any discussion at that meeting relating to the sale or the solicitation of business by the representatives of the parties present?

"A. I don't recollect that, either.

"Q. Do you recollect anything at all about that meeting?

1463 "A. Yes, just one thing, and strange as it may seem, I think this is the only thing that imbeds itself in my memory concerning that meeting, which was very short, and that referred to a so-called truce. I assume that might have been the purpose of the meeting.

"Q. What was this truce?

"A. A truce between NEA and King Features, so far as readyprint business was concerned.

"Q. What exactly does that mean?

"A. I used the word 'truce,' because I may have used it then. That is, to stop bothering each other.

"Q. When you say to stop bothering each other, do you mean that you weren't going to compete for each other's the existing newspaper accounts?

"A. That's right, sir.

"Q. Was that matter discussed at this meeting?

"A. That is the only thing I recollect as having happened there.

"Q. When you left the meeting, as far as King Features was concerned, how was this so-called truce or arrangement to operate?

"A. We were to leave each other alone.

1464 "Q. By leaving each other alone, does that mean as far as King is concerned or does it mean as far as all the parties are concerned?

"A. Just between NEA and King.

"Q. Was anything said at that meeting in regard to Greater Buffalo?

"A. I don't recall that.

"Q. But at least NEA and King were not to solicit each other's accounts?

"A. That was the intention."

Mr. STEVENS: Continue, please.

Mr. BERNSTEIN: Line 9:

"Q. Was there any discussion about new business or newspaper which either one of them was not servicing at that time?

"A. I don't recollect that.

"Q. Thereafter, pursuant to that discussion or meeting which took place in the last part of 1955, and I am speaking of immediately thereafter, did King attempt to solicit then existing accounts being services by NEA?

"A. We did.

"Q. Immediately after the meeting?

"A. Oh, I wouldn't say immediately. I don't know when, but it happened.

"Q. I am talking about the period that immediately 1465 followed the meeting?

"A. Well, I can't answer that.

"Q. I am talking about the month after that?

"A. I wouldn't remember that."

Do you want anything more?

Mr. RAICHLE: I want line 8 read, read line 8.

Mr. BERNSTEIN: Page 83:

"Q. You have no idea whether King adhered to that discussion or agreement or truce which you described?

"A. That's right, sir.

"Q. Did King adhere to it at all for any period of time, to your knowledge?

"A. I would say we took it easy.

"Q. You say you took it easy. I want to know whether you adhered to that truce or agreement?

"A. I would say no.

"Q. At no time at all did you adhere to it?

"A. Yes.

"Q. Yes, what? You did adhere to it or you did not?

"A. I told we did and we didn't.

"Q. I am talking about the period immediately after that meeting, did King adhere to that agreement?

1466 "A. Then my answer to that is that I don't remember.

"Q. Did you, after that, after leaving that meeting, have any discussions with your salesmen in regard to what the policy of King was going to be about soliciting then existing accounts of NEA?

"A. I don't remember that."

I don't propose to read any more.

Mr. RAICHLE. That is all right.

Mr. BERNSTEIN. All right.

Mr. STEVENS. Read the last question and answer on the page, page 83.

Mr. BERNSTEIN. Line 23.

"Q. Do you recall ever receiving information from your salesmen that they would not solicit any NEA business?

"A. They wouldn't initiate that.

"Q. What they actually did. I am talking about factually what they did.

"A. Some of them didn't.

"Q. They did not solicit NEA accounts?

"A. No.

"Q. Was this the result of communication from you?

"A. I think so.

"Q. Going back to my original question, namely 1467 whether the truce was adhered to by King for any period of time after the meeting held at the hotel on Lexington Avenue, does that refresh your recollection now as to whether or not King adhered to the truce?

"A. It did in some instances.

"Q. When you say, 'some instances,' does that mean that you recall one or two cases where King did not go out and actively solicit a newspaper account being serviced by NEA?

"A. That's right.

"Q. Immediately after that meeting, to your knowledge did NEA attempt to solicit accounts then being serviced by King?

"A. I can't recollect, I don't remember any cases.

"Q. Do you know whether or not NEA adhered to the so-called truce you spoke about in the period immediately after the meeting?

"A. I don't know."

I am now going to Topic 13, which is evidence offered to show that the agreement between NEA and King not to compete was implemented. I am talking now about Exhibit P-35, 1468 which was formerly Document 24. It is a document that bears the title, "Sales and Promotion Department Budget—1956." It bears the initials WHB. It has been stipulated that William H. Borklund was Vice-President of NEA from July 27, 1955, to January 1, 1961.

Mr. RAICHLE. You are offering that against NEA only?

Mr. BERNSTEIN. We are offering it as against NEA and also as against—at this time we will offer it against NEA, and reoffer at a later time as against Greater Buffalo.

Mr. STEVENS. No objection from NEA.

The COURT. Received.

(Thereupon, Government's Exhibit P-35, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the paragraph about halfway down the page. It says: "To explain this a bit further, it should be pointed out that our sales force has actually been restricted on 'things to sell' from our situation three years ago." Paragraph two: "The sale of Buffalo Color Press takes us out of the readyprint business to the extent we can no longer compete for runs controlled by King Features. In this respect, not only is our readyprint business growth restricted, but indirectly this will also cut down on Sunday comic sales, because we have invariably added pages to these tailor-made sections whenever we took a run away from our competition. There is no question that both the sale of Acme and Buffalo Color Press was an excellent move financially for NEA. However, the fact remains

that it did cut down on the opportunities our salesmen had to increase gross business."

The COURT: That I don't understand at all. Can you 1470 give me the Government's view of that?

Mr. BERNSTEIN: The Government—

The COURT: "There's no question that both the sale of Acme and Buffalo Color Press was an excellent move financially for NEA." What do you understand that to mean?

Mr. BERNSTEIN: The Government contends NEA profited by that arrangement, it was a good deal, as far as NEA was concerned. As NEA said, "However, the fact remains—"

The COURT: I don't understand what the affiliation was between NEA and Buffalo Color Press.

Mr. BERNSTEIN: Buffalo Color Press was a subsidiary of NEA. NEA sold it. Buffalo Color Press was the printer for NEA. NEA was doing its own printing through its own subsidiary. It sold that subsidiary to the Greater Buffalo Press and made the arrangement that Greater Buffalo would do the printing, and give NEA a royalty in lieu of it. NEA 1471 then made the deal with King. This document shows that it implemented the agreement that Mr. Nicht testified he made with NEA representatives.

The COURT: All right.

Mr. STEVENS: May I point out to the Court that Mr. Borglund's meaning of the document is shown on page two in his recommendations. He said, "In our recommendations for 1956 I have a number of suggestions which we believe will strengthen the service and perhaps put us on the trail toward doing a good job next year. 1. That we actively search for some new 'big ticket' things to sell." In other words, not having the printing to sell, printing from Buffalo Color Press, as sales manager he was looking for something for his salesmen to sell. That is the context in which he used the language he did.

Mr. BERNSTEIN: P-36 for identification, Your Honor, 1472 formerly Document 28, is another sales report from NEA, dated January 19, 1956, prepared by one of its representatives, and it is offered at this time as against NEA, and will later be offered as against Greater Buffalo.

Mr. STEVENS: NEA has no objection.

The COURT: All right, received.

(Thereupon, Government's Exhibit P-36, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the fifth paragraph down: "I was asked by Carmage Walls while in Alabama last week whether we would be interested in printing the comic section, and if we were, he would give us the contract on July 1st. He also asked me to submit my price for the printing of this section, and whether we would supply a 1473 number of comics free of charge in the event we were awarded the printing contract. Since that time, I have discussed this with WHB——" stipulated as William H. Borglund—— "and Earl Anderson——" stipulated as Vice-President of NEA—— "who state that under our new arrangement with GBP we will not attempt to take any current contracts away from KFS——" this is stipulated to mean King Features Syndicate—— "therefore at my meeting today I advised the group that due to the shortage of newsprint we would be unable to supply them and for that reason there was no reason for giving them a printing price."

The COURT: Let me see that again?

Mr. BERNSTEIN: That is third from the last paragraph, Your Honor.

The COURT: All right.

Mr. BERNSTEIN: The Government contends for this document that because of the truce, as Mr. Nicht described 1474 it, this shows the affect on the salesmen. The salesmen, when asked for a quotation by a company presumably that was being serviced by King Features Syndicate—naturally he didn't tell them about their agreement not to compete with each other's customers—he advised that due to the shortage of newsprint he would be unable to supply them, there was no reason for giving a printing price. P-37 for identification, Your Honor, formerly Document 253, another sales report dated January 11, 1956, NEA representative R. C. Whitehead. This is offered in evidence against the defendant NEA, and reserve the right to offer it later as against Greater Buffalo Press under the co-conspirator rule.

Mr. STEVENS: No objection from NEA.

The COURT: Received.

(Thereupon, Government's Exhibit P-37, previously 1475 marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: I invite the Court's attention to the next to the last paragraph: "Although we were asked, just recently,

work up a new readyprint for them——” —apparently referring to the newspaper at the top of the report, the Tupelo, Mississippi Journal— “including our comics exclusive of the Memphis use, we are now confronted with the fact that we cannot take any business away from KFS——” —stipulated King Features Syndicate—“on account of GBP——” —which is stipulated refers to Greater Buffalo Press—“when I was in Tupelo this week, I had to say to the publisher that due to the shortage of newsprint we were unable to attempt give him a printing price at this time.” The Government makes the same contention with respect to that document, as further evidence that the contract was implemented or the understanding was implemented. P-38, formerly known as Document 115, a memorandum dated March 21, 1957, purporting to be a sales report with respect to the newspaper, the Jackson, Mississippi State Times.

Mr. RAICHLE: Offered against NEA?

Mr. BERNSTEIN: Offered against NEA, subject to reserving the right as against Greater Buffalo.

Mr. STEVENS: NEA has no objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-38, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The Court's attention is invited to the fourth paragraph: “Robinson entered a cancellation with KFS”—stipulated as King Features Syndicate—“some time ago for their Sunday color comic readyprint, and I learned while here that Jack Hornaday had been in to see them offering them a very attractive deal with the usual advertising rebate, and Robinson asked my opinion and also asked if I would give him a quote on printing the color comic section for him. I explained to Robinson that the Jack Hornaday deal was not a good one for him, and went on to explain that we were now working on a plan under the name of Dixie Color Comic Network, which would be much better for him, therefore, Robinson said he would drop the idea of discussing it any further with Hornaday. Since we are in agreement with KFS not to take each other's present printing contracts, I explained to Robinson that his present contract with King, of \$16.50 per thousand for an eight-page color comic section was a very good one indeed, and I padded my price to the point of saying that I could not afford to sell him a

1478 section for less than about \$22 per thousand, so Robinson said he felt he would renew his contract with KFB when they come to see him." Document P-39, formerly known as Document 30, appears to be a memorandum to Bob Whitehead of Atlanta, stipulated as having been a sales representative of NEA, and bears the initials HWW, stipulated that the document was prepared by or under the supervision of Herbert W. Walker. It is stipulated that at the time of this document he was Vice-President of NEA. P-39 is offered in evidence as against NEA, subject to a later offer against Greater Buffalo.

Mr. STEVENS: NEA has no objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-39, previously marked for identification, was received and marked in evidence.)

1479 Mr. BERNSTEIN: "Dear Bob: I have just caught up with your report of March 21—" the Government contends that refers to P-38, the sales report that has just been read which contained the words that "I padded my price to the point of saying that I could not afford to sell him a section for less than about \$22 per thousand—" this letter says: "Dear Bob, I have just caught up with your report of March 21 on your call at the Jackson, Mississippi State Times. This paper has a King eight-page color comic section at \$16.50 per thousand, and you report that you told Robinson our price probably would be around \$22. It's all right to be high in cases like this, but I don't believe I would put the figure up as high as you did in this case. More like \$1 to \$1.50, I would say. Some suspicions might be aroused on the higher quotations."

The COURT: I think we will stop for the night and
1480 resume at ten in the morning.

Mr. BERNSTEIN: I have three more documents to clean up this topic.

The COURT: Hold those until ten in the morning.

Mr. BERNSTEIN: Yes, sir.

(Thereupon, the court was in recess at 4:25 p.m.)

1481 Proceedings resumed October 14, 1965, commencing at 10:00 a.m.

The COURT: Yes.

Mr. BERNSTEIN: May it please the Court, with respect to Exhibit P-40 for identification; P-40 is the letter from J. W. Koessler, President of Greater Buffalo Press, Inc., dated January 26, 1956, addressed to Mr. Frank J. Nicht, the Government offers the exhibit in evidence.

Mr. STEVENS: The exhibit has heretofore been admitted,
P-40, I believe.

Mr. BERNSTEIN: I'm sorry.

CLERK OF THE COURT: P-40 is in evidence.

Mr. BERNSTEIN: With respect to P-41, formerly known as
the Document 114, a letter dated February 9, 1956, from J. W.
Koessler, President, to Mr. Earl Anderson, Buffalo Color Press.
The Government offers the exhibit in evidence.

Mr. STEVENS: NEA objects to this document.

1482 Mr. BERNSTEIN: It has been stipulated, Your Honor,
that Mr. Earl Anderson, at the time of this document,
from April 2, 1953, to June 11, 1956, which covers the
period of time when this document was addressed to him, was
Vice-President of Buffalo Color Press, Inc., and the relation-
ship between Buffalo Color Press, as a subsidiary of NEA, has
already been presented in the record.

The COURT: You have no objection, Mr. Raichle?

Mr. RAICHLE: No, except as to relevancy, materiality.

The COURT: Overruled. Received.

(Thereupon, Government's Exhibit P-41, previously marked
for identification, was received and marked in evidence.)

Mr. BERNSTEIN: The Government invites the Court's atten-
tion to this exhibit: "Dear Earl: I called Frank Nicht on the
Rome, Georgia, matter Tuesday and he sent me this wire today.

1483 Rome, Georgia, contracts were negotiated last year em-
bracing supplement printing and Feature Budget.' I
don't know if this is within or without the rules but I
sure wish to hell this poaching would stop." The Government
claim for this letter is that this letter indicates and further con-
firms the testimony of Mr. Nicht that he had met with NEA
at Greater Buffalo's request and had made arrangements with
them to respect to each other's customers, rather as a truce,
and this confirms that. And the letter means to the Govern-
ment that Koessler phoned Frank Nicht with respect to a news-
paper in Rome, Georgia, and that Mr. Nicht replied to him the
quotation indicating that Nicht claimed that account was his,
and Mr. Koessler's reply, "I don't know whether if this is within
or without the rules—" meaning he doesn't know who is sup-

posed to have it under the arrangement or agreement
1484 they had—"I sure wish to hell this poaching would
stop," meaning he wishes that this breach of the agree-
ment would stop. That is the Government's contention for this
letter.

Mr. RAICHLE: Now, only because counsel has seen fit to attempt to interpret the letter, and, we submit, misinterpret the letter, let me put on the record at this time an answer to that so Your Honor can deal with the question of competence and relevancy when you get to it, and have this on the record. This will not be long, and not be repeated, but it is with your permission I am going to answer him?

The COURT: Yes.

Mr. RAICHLE: At a time when the Government charges that King Features was tieing in the sale of printing with the sale of features—King Features wouldn't sell its features unless the printing was also bought through King Features—NEA

1485 and King Features met at this Beverly Hotel, NEA could complain about the illegal conduct on the part of King

claimed so to be by the Government, and the rules that he is talking about are the rules of law, not any agreement made by King Features Syndicate and NEA. From Greater Buffalo Press point of view, take the undisputed evidence in the record he put in—by "he," I mean my learned adversary—the testimony of this man Nicht, in highly selective portions at page 81 and 82 the following occurred, this is what he read to Your Honor—a truce between NEA and King Features was so discussed at that meeting, not any truce between Greater Buffalo Press and either of them. Greater Buffalo was favored with the business of both, what difference did it make to Greater Buffalo whether King Features or NEA took business one from the other? Now then, at page 82, and

I think this is very important, Your Honor:

1486 "Q. Was anything said at that meeting in regard to Greater Buffalo?"

Mr. BERNSTEIN. What line?

Mr. RAICHLE: Number 2. Number 1 says: "Nicht, direct."

"Q. Was anything said at that meeting in regard to Greater Buffalo?

"A. I don't recall that.

"Q. But at least NEA and King were not to solicit each other's accounts?

"A. That was the intention."

Now, that is so important to us because it sheds light on these alleged documents or records or writings among the personnel of NEA to which we were not a party and knew nothing.

Whatever was said at that meeting on the subject of a truce related only to NEA and King, born out of the fact that King was violating the law and tieing in the sale of features with the sale of printing, and presumably damaged NEA in that regard and, naturally, they were protesting. He might say and, "Why didn't they protest to the Government?" Somebody protested to the Government here, and here we are, eight years later, with the blessing of the Government, King still ties in features and the sale of printing, even under this consent decree which the Government blessed. I am not going to repeat it.

1487 Mr. BERNSTEIN: I object to the remarks, Your Honor, and move they be stricken, that is, "with the blessing of the Government King Features ties in—"

The COURT: I consider that your remarks are in the nature of summation, explaining what certain exhibits are to me. If we followed the ordinary pattern of taking the evidence, you summarize. This is the type of summation that I think is designed to meet your claim.

Mr. RAICHLE: That is right.

Mr. BERNSTEIN: I was taking exception to the remark "with the blessing of the Government."

The COURT: That is counsel's view. Overruled.

1488 Mr. RAICHLE: I wanted Your Honor to have in mind our contention and the undisputed evidence. The only talk about the truce was between those two people. That cannot relate to the conspiracy charged, for if it does, then we are not a party to the conspiracy charged. That is the trouble with this case; it's quicksand. To make documents business records, if they were such, admissible, it would have to be documents or statements made during the course of the conspiracy charged, not some other conspiracy, and during the course of a conspiracy which included as a participant the one or ones against whom it is offered, after independent proof has been made of such conspiracy. What I have just read, I respectfully submit, clears up all the innuendo that he would like to import into this case by the documents that he was reading yesterday, and dispels his claim and explanation to Your Honor about this document. Now then, even more important than 1489 the testimony of Nicht that has been offered by the Government, that this arrangement, whatever it was, truce, which the evidence shows and will continue to show, was more

honored in the breach than the observance by both of them, is the fact that the complaint itself charges on page 9 under paragraph C: "In or about November 1955, representatives of King and the co-conspirator Eastern——" that isn't us—"held a meeting in New York, New York, at which they agreed, among other things, that King and Eastern would refrain from soliciting each other's established newspaper accounts in the sale of color comic supplement printing services. King and Eastern continued this agreement or arrangement to the date of this complaint." The point about reading that is this: Here 1490 is the ogre in their absence, here is the predator, King, the wrongdoer, King, seeking to dominate through this illegal tie-in, meets on the one hand with NEA and establishes or claims to have established something which Nicht happily describes as a truce. Then the predator, the wrongdoer, King meets with Eastern and evidently works out some such arrangement to which we were not a party and didn't know. He goes on in D and E, and so forth. But my point is, and I hope at least I have made it, in answer to his contention, is that he has a contorted construction of the letter; it doesn't mean what he claims it means; it couldn't because of the arrangements I have just mentioned, and the documents yesterday have no bearing or relation to us.

Mr. STEVENS: I would like to speak on behalf of NEA as well.

Yesterday when Exhibit 17 by the Plaintiff was offered 1491 and Your Honor accepted it with the qualification that it had to be tied into NEA later, Mr. Bernstein said that such Exhibit 17 shows that the exclusive commitments between Greater Buffalo and King Features in fact continued. By exclusive commitments, I mean, Your Honor, that at that time Mr. Bernstein was saying that King Features and Greater Buffalo had an arrangement by which one would be the exclusive sales agents and the other would be the exclusive printer. Now, according to the testimony of Mr. Nicht, it was some time in November of 1955 that a truce, as he described it, upon soliciting business from each other's customers was arranged between NEA and King Features. The duration of that truce—a word which in and of itself connotes a most temporary suspension of hostilities and a contemplated resumption of hostilities—the duration could not possibly have 1492 extended beyond January 17, 1956, if the theory which Mr. Bernstein urged so strongly to the Court in seeking to obtain admittance of Exhibit 17 into evidence is valid.

Because he said that this letter was offered to Your Honor to show that the exclusive commitments—one to be exclusive sales agent and the other to be an exclusive printer—continued despite the fact counsel had taken out of the draft written agreements which were passing back and forth, not between NEA and anybody else, but between King Features and Greater Buffalo.

Mr. BERNSTEIN: Later on this morning, Your Honor, I will have occasion to make a motion with respect to the evidence, and during that time the Government will respond to the remarks made by counsel at this time. I won't take up the time right now. P-42 and P-43 for identification are now 1493 offered in evidence. P-42, formerly known as Document 31, and P-43, formerly known as Document 29.

Mr. RAICHLE: No objection to 42.

Mr. STEVENS: No objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-42, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: May the record show that P-42 and 43 are in evidence?

Mr. RAICHLE: I didn't say 43.

Mr. BERNSTEIN: I'm offering them both. P-42, Your Honor, is a letter from Earl Anderson of NEA to Kenneth Koessler of Greater Buffalo; and P-43 is a letter from Mr. Koessler to Earl Anderson. The Government contends both of these letters refer to the same subject and are related.

The COURT: These have both been offered.

Mr. RAICHLE: I have no objection.

The COURT: I haven't heard from Mr. Stevens.

1494 Mr. STEVENS: I object to P-43, certainly nothing in here, it seems to me, shows a reply to P-42.

Mr. BERNSTEIN: The words "Fargo and Sioux Falls."

Mr. STEVENS: They are on a lot of maps, too.

The COURT: If that is the basis of your objection, I will overrule it. The question of the affect of the exhibit, you may argue that to me at a later date.

(Thereupon, Government's Exhibit P-43, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: P-42, Your Honor, is a letter from Mr. Anderson of NEA to Mr. Koessler, dated March 4, 1960: "Re The Sioux City (Iowa) Journal. Dear Kenneth: You had been

aware of the difficulty that we have had in holding the run:
 the Sioux City (Iowa) Journal due to the low quotations from King Features Service." I skip the next line
 1495 "In order to hold this run, after taking full advantage of the fine service we have given them over the years and every possibility in the baggage rate, we had to make a quotation here that brings your printing rate to \$15.82 per thousand f.o.b. Buffalo. I know you and Walter don't like this one, and I can assure you that it is just as tough on us. Although King made this quotation last Fall, we have kept the rate up until the expiration of our contract, but now the change will have to be made effective with the release of March 13, 1960. We now have this protected by contract for two years. The other bad news is that we now have a cancellation in from the Fargo (North Dakota) Forum due to a quotation from Mr. Rabnow that seems to be based on about the same pricing." P-43

is a letter from Mr. Koessler to Mr. Anderson dated 1496 March 15, 1960, eleven days later. He said: "Dear Earl: Frank Nicht has been in the hospital for the past three weeks. When he returns to the office I am going to visit with him and tell him that the policy being pursued is just breaking down the market and returning nothing to him except retaliation. Fargo and Sioux Falls—" I digress, those are the two letters—those are the two papers referred to in P-42, the Government contends—"go together as I understand it and the combined circulation is in excess of 100,000. This job should present no problem competitively. I suggest you destroy this letter." It is the Government's contention that this—

Mr. RAICHLE: I don't think he ought to state his contention each time.

The COURT: What you are doing here, in effect, is making a summation of the nature and quality of your proof and if we do this, it is going to provoke, in each instance, a 1497 response from either or both defendants of their views on the same subject. Now, I expect, in due course, to give you an opportunity to review your case in the light of all the evidence, in the way of a summation to me instead of a jury, and I do not object to this except for the time that is going to be consumed. It is going to be repeated.

Mr. BERNSTEIN: No, this is just being done with one or two documents in order for the Court—

The COURT: This is the last one you have in mind?

Mr. BERNSTEIN: Yes, sir.

The COURT: All right. Go ahead, I'll listen to the response and we'll go ahead.

Mr. BERNSTEIN: The Government contends it is related to what was said before, that this continued up through March 15th, 1960, which is the date of the letter. That is all I wanted to point out at this time.

1498 Mr. RAICHLE: Well, I suppose you can draw something sinister. May I see that just a second? It says: "I suggest you destroy this letter." I suppose Mr. Koessler would have been happy to have Mr. Nicht see it, he wants him to think it didn't want the Government to see it.

Mr. STEVENS: If the Court please, for NEA; this letter indicates the kind of telescoping of time of which the Government is persistently guilty in antitrust matters. They find something which is a kernel of the violation in the mid 50s; they find a letter in 1960 with the sentence that Mr. Raichle referred to in it, which may have been written for a large number of reasons, and they say, "Ah! This must be related to the kernel of the conspiracy," which they found five years earlier; and more than that, that the policy being pursued,

which had to be Frank Nicht's policy because it was 1499 Frank Nicht, the Hearst man, to whom Koessler was going to talk, that his policy is just breaking down the market. Now, there simply is no necessary connection between the meeting in the Beverly Hotel, which Nicht put in the Fall of 1955 when a truce—and I repeat, a word which implies fully a most temporary arrangement—and the policy being pursued in March of 1960.

Mr. BERNSTEIN: Now, if the Court will bear with me for perhaps five minutes, no more, I would like to take this opportunity to answer some questions that the Court raised yesterday concerning this matter; and I respectfully submit that by taking this five minutes at this time, this will put the contentions of the Government in focus in relation to the documents and it will assist the Court, as these documents come in,

in having a better understanding of what it is the Government is trying to do, and that it has a genuine effective and sincere purpose and a valid case. Yesterday the Court asked me a question that I was not prepared to answer, but referring to 1954, and in discussions about the arrangement between King and Greater Buffalo. The Court

made inquiry as to whether King hoped to get its printing done cheaper by Greater Buffalo. Implicit in the question—

The COURT: Implicit in the question is something you said this morning; what did Koessler care about NEA's and King's row if they had one?

Mr. BERNSTEIN: Precisely; this is the point to which I want to address myself. I believe it goes to the heart of the case. An understanding of this will permit the Court to understand what the Government is attempting to establish here in this case. The answer is, Koessler did have something to gain by it. But

more basic than that, the Government concedes that
 1501 then in 1954, and now, that Greater Buffalo is the most efficient color printer. The Government concedes that Greater Buffalo Press is a genius for efficiency and economy, for reducing costs, for organization, and by this lawsuit the Government is not seeking to enjoin that talent. It is not seeking to enjoin Greater Buffalo Press from exercising that talent. It is seeking to protect the right of Greater Buffalo, as Mr. Raichle said here this morning, against the use of tie-ins; seeking to protect the right of Greater Buffalo to get a larger share of its market by its own talent and without combining with competitors to do it. Now, Greater Buffalo had and has the right to set up its own plant in Lufkin, Texas; any new plant that it wishes to open. It had the right in 1954, or prior

thereto, when the Government charges that King and
 1502 NEA were tieing in features. It had the right not to be a victim of that tie-in to seek to get printing. The law, by this lawsuit, is trying to protect it in that right by eliminating the tie-in. At the same time, the law does not permit Greater Buffalo Press to take the law into its own hands and join in with the Syndicates doing the tieing in and taking the advantage of their power. Let me spell out for a moment; the Syndicates have salesmen who visit newspapers and sell copyrighted features. By the copyright, the law gives them a lawful monopoly to that feature, that is all, and the Syndicate has the right, if it chooses, to use those salesmen at the same time to sell printing, printing services, but printing that it does in its own printing plant or printing done by a subsidiary or printing done by any commercial printer that it chooses
 1503 to engage for itself, it has that right. The law does not give each one of these Syndicates the right to say to a newspaper, "If you take my printing you get the features

free or you get it cheaper in one package, take this thing tied up together." It doesn't have that right. This lawsuit is seeking to prevent. The Government submits that the judgment which this Court has signed, which Your Honor has signed, and which counsel has characterized as the blessing of the Government, prohibits King Features from tying in and makes certain provisions that will go into effect if the Court grants the relief sought by the Government for dissipating the monopoly of Greater Buffalo. Those provisions make it even more stringent, to prevent a recurrence of the tie-in, which the Government seeks to outlaw. Getting back to Greater

Buffalo. Greater Buffalo, being a victim of tie-ins, instead of using the law's remedy to prevent such tie-ins, joins up with the lawbreaker and takes advantage of that tie-in by getting King Features to act as its sales agent. Now, turning the clock back to 1954, or earlier, the Government would not be in the courtroom today—if the Court please, the colloquy of counsel interrupts my train of thought.

Mr. RAICHLE: I'm sorry.

Mr. BERNSTEIN: If we turn the clock back to 1950, 1505 or 1954, the Government would not be in this courtroom today had King Features merely transferred runs that it was having printed at International, a competitor of Greater Buffalo in the printing, and given the business to Greater Buffalo as a printer. That would be American competition; it had the right to seek to get a better price from Greater Buffalo rather than the price it was paying to International. But that is not what this case is about. This case charges that King and Greater Buffalo agreed that King would keep its printing in International and Greater Buffalo would keep its printing in Greater Buffalo. Now, I think that it would be simple to see the violation here if, instead of King having its printing done by International, it actually did the printing itself. There it would be a printer and a seller of printed supplements. If Greater Buffalo sold its printing, it would be in competition with King and any agreement between them to allocate customers—"You take this one, I'll take that one, I'll give you a kickback on this one if you don't bid"—any such agreement would be obvious. It is more difficult to see here because Greater Buffalo doesn't do its printing; instead, it goes to a

commercial printer, International, and has its printing done for it. From the standpoint—

The COURT: Greater Buffalo?

1506 Mr. BERNSTEIN: King; excuse me. I misspoke.

The COURT: King goes to another?

Mr. BERNSTEIN: King goes to International under an arrangement with International. For all intents and purposes, International is the captive printer of King. It has a contract it won't print for anybody else, but print exclusively for them, and King will turn virtually all its business over to it except for the West Coast business, which they approximated was about 75%. For the purpose of competitive aspects, it is just the same as if King owned the printing plant and made the arrangement with Greater Buffalo, or made the arrangement because International owned the plant, that doesn't change it. The Government asserts, and makes a strong representation, that had Greater Buffalo achieved 100% of the market of color

printing done for newspapers that don't print their own, 1507 by the genius and talent and organization that it has, the Government wouldn't be in this courtroom today and couldn't be in this courtroom today. Our American free enterprise system permits somebody to get complete control of the market if he does it by building a better mousetrap, a better product, but the law, the antitrust law, does not permit this to be done by combining with a competitor to do it. By the same token, International was free to get out—strike it out. The stockholders of International were free to sell their interest in International to anyone they wanted, with one exception. What was the exception? The exception was Section 7 of the Clayton Act. Section 7 of the Clayton Act acts as no restraint on International; it does act as a restraint on who is going to buy International because Section 7 of the Clayton Act says

no corporation shall acquire the stock of another corporation where the affect might be substantially to lessen competition in any line of commerce in any section of the country. Obviously, under such a law it doesn't permit the leading competitor to buy out the other leading competitor, except if International had been bankrupt and there was no other purchaser, then that could be done. That isn't this case. This case, if International was not printing economically, if

International wasn't making any money, it sought to sell out, International would have to find a buyer, have to find a buyer that met the test of Section 7, that wasn't prohibited from buying it by reason of Section 7. That meant that King, the Syndicate, was on the spot. It would have to do something; it would have to do something in competition with Greater Buffalo. The law prohibited Greater Buffalo from making the acquisition. King would have to make a decision. King had a lawful right to get out of the printing business, it could have remained in the Syndicate business. If it determined to remain as a printer and International determined to sell, then King had to do something else; either finance the transaction or it either had to arrange another customer, or to buy International itself and then be the kind of competitor that I described initially, where it was selling the features and it was also selling the printing, and the law would prohibit it from using its power as a copyright owner of the features from getting a competitive advantage on the printing by tieing it in. But where does Greater Buffalo's offense come in? Being a victim of this tie-in, Greater Buffalo made an error in judgment. It had and it has the ability to compete, out-

compete anyone else. It has this marvelous talent for efficiency and economy, reducing costs. But it chose a different road, it chose to make false promises to King, that by promising that King would be the sole sales agent for Greater Buffalo, nobody else would be in the picture, Greater Buffalo would just be the printer, then King would be the exclusive sales agent, so Greater Buffalo would get the benefit of King's tie-in of the copyrights. Greater Buffalo joined in to get the advantages of that illegal activity rather than being in the role of the victim or that rather than seeking the law's help to stop it. Now, after gaining the power through these false promises, Greater Buffalo then double-crosses King and it uses NEA as its Syndicate, again using the tie-in power that NEA has, and by getting NEA and King together—the last

exhibit put in evidence answers your Honor's question directly as to what did it matter to Greater Buffalo whether NEA and King were competing, knocking their brains out. I read from P-42, the letter from Earl Anderson to Kenneth Koessler, where he complains about the low quotations that King has been charging, and he said: "We had to

make a quotation here that brings your printing rate—Greater Buffalo Press's—"to \$15.82 per thousand, f.o.b. Buffalo. I know you and Walter don't like this one, and I can assure you that it is just as tough on us." Greater Buffalo's advantage and interest is, if two salesmen are fighting each other by offering lower prices, the only affect is that it is going to get lower printing prices; has to come out of the printer, whereas the price will be maintained and stabilized if the newspapers are led to believe when NEA comes in, and the newspaper

1512 paper in the good American tradition wants to get some competition—that is not a dirty word, seeking a better price for itself, being able to provide efficiency in its plant, so that the advertising rates can be sold cheaper, so that the public will get the benefit of competition, that isn't a dirty word—the newspaper trying to get that from NEA is misled into believing when King comes around, or vice versa, and NEA says, "We have no newsprint," it's a sham, or NEA says, "Our price is X dollars more than King's price." The newspaper believe this is legitimately and genuinely being quoted. They are being misled and cheated, really. Now, the Government claims that had it not been for Greater Buffalo's conduct in making its arrangement with King, assuring it it would be the exclusive agent, King never would have permitted Greater Buffalo to make that acquisition. It had two simple ques-

1513 tions open to it to stop it, in addition to what I told Your Honor the other day. One, to bring an action under Section 7 of the Clayton Act for an injunction to enjoin the acquisition. That was the simplest thing it could have done. Many people hate to complain to their Government because they think this stigmatizes them. This is not the case. The Antitrust Division's doors are open every day to receive complaints. This doesn't mean that because somebody comes in and makes a complaint that without any inquiry, without any evaluation, the lawsuit is immediately started. It is the duty of every victim of any unlawful offense, including business offenses, to report that offense to the proper authorities and not to take the law into its own hands and seek by self-help to get the benefits of the unlawful contract. Now, the importance of

1514 this case, Your Honor: I think it is important for the general business community to reaffirm some other principles we have. The Sherman Act has been on the books since

1890. I listened to an interview this morning with former President Eisenhower in which he made a plea for our return to the principles of decency upon which this country was founded, and although the Sherman Act has been in effect since 1890, seventy-five years, that principle of free enterprise is just as valid today, and it is so essential to protect that principle. We see Iron Curtain countries where Government control and State-regulated economies direct how business is to be run, direct who gets which customer, or who supplies which newspaper, and who does not. It is obvious to everyone in the courtroom, it is almost ridiculous to make the statement, how un-American that conduct is. But we fail to recognize too often how just as improper, how just as important it is to prevent combinations of competitors from controlling an industry, combinations of competitors from controlling the opportunity of newspaper and consumers to buy in a competitive market. That is what this case stands for. I have another question that Your Honor asked but I think, Your Honor, it goes to another subject. So I will pause at this time and await Your Honor's disposition.

1515 Mr. RAICHLE: If Your Honor please, we seem to be proceeding differently than I thought we would. I could not, nor could Your Honor expect me to, subside while counsel would leave unanswered that statement of his. Trying to make my remarks in brief, let me point out one or two things: The first is self-evident. If I heard counsel correctly, he said we were the victims, that is, Greater Buffalo was the victim of misconduct on the part of King. Later he said we double-crossed King. At one point he said that we were to be criticized for not complaining to the Department of Justice. At another time he went so far as to make a representation that this proceeding against us and the other defendants is really for our own benefit, all of which confuses me and drives me back to record. If there is one thing that stands out like a pikestaff in this case is that the competition between Greater Buffalo Press and King Features, and NEA, was not only active and fierce, but it was almost vicious in spots. Prior to 1955, or the time of the acquisition by Greater Buffalo of International Color Printing Company, Greater Buffalo Press from its humble beginning had grown by reason of the efficiency and the ability to turn out what he calls a better mousetrap, to the

point where it was taking printing business away from
 1517 King, from NEA, and was nibbling at the entrenchments of King. Greater Buffalo had no features to sell; it had printing to sell. NEA sold the package, the features and the printing, and the printing was done at International Color Printing Company. The competition was not between International and Greater Buffalo; it was between Greater Buffalo and King Features on that phase of it, and NEA on another. The time comes, as the evidence in this case shows, when the family which owned International Color wanted to sell the stock. King through its dominance of International had driven the price of printing down to the point where it was almost impossible for International Color to survive. One of these documents make that clear, the evidence in the record
 1518 makes it clear, and the fact is established that International Color was completely beholden, a captive plant, as counsel describes it, of King. Then International is for sale. Nicht would like to have King Features buy it. Hearst buy it, but he is turned down in that respect. Hearst doesn't want to put up the money; Hearst has got a good thing, grinding down the owners of International, making a handsome profit every year, taking it out of their hides, if I might use the expression, so they look about elsewhere to sell—I mean the owners of the stock of International Color Printing. In the course of time Greater Buffalo Press acquires the stock of International Color Printing. At or about that time, as the evidence shows and as I cheerfully admitted, in fact, asserted in my brief opening, there was a flirtation on the part of King and Greater Buffalo, initiated by King, whereby King wanted to become the
 1519 exclusive sales agent. But if there is one fact that stands out above all others, that flirtation died aborn, the negotiations did not ripen into a contract, and King never became the exclusive sales agent of Greater Buffalo Press. I don't see how counsel, with a straight face, could assert it did. It never became a sales agent of Greater Buffalo Press. The transaction will be laid out in detail, the method of doing business will be clear. The complaint of King, oft repeated, is that the competition of Greater Buffalo Press has been harmful, and nothing could illustrate better the inconsistent and the confusing character of the claims asserted by the Government in this case than this brief statement which, with Your Honor's permission, I will read from Mr. Feldman's remarks made to this Court on

July 7, 1961, four years ago, when the Government was seeking from Your Honor a temporary injunction. I read it against the background of counsel's statement to Your Honor made a few minutes ago, that King became the exclusive sales agent of Greater Buffalo Press and that Greater Buffalo Press and King Features were in a mad, stifling competition, known not only reputative but actual. This will show beyond every venture of a doubt that the competition was so keen that the Government felt called upon to protect King against such competition. Here is what Mr. Feldman said: "Now, with recent times Greater Buffalo, which of course controls International, has gone out and displaced King Features Syndicate, by displaced, I mean King Features would have an existing contract for printing for the publisher and they in turn would get publisher's printing from International. Obviously, Greater

Buffalo knows and controls the price upon which International sells the color comic supplements and Greater Buffalo can go out, instead of quoting the price to the Syndicate, which has to make a profit, quotes the same price offered to the Syndicate to the particular publisher." That relates to the letter that we talked about yesterday where the words "competitive price" was used. The claim and the complaint of King Features has been that we do not favor them, that we don't give them one price and the publisher of a given newspaper another. We compete with King, and we compete with NEA, and NEA compete with each other. Now, I will admit that consistency has not been one of the lamps of advocacy, I think that applies to legal contentions. I think the law allows that in the Hornbook way, inconsistent claims, inconsistent defenses, but never an inconsistent contention about the facts.

The facts are the masters of us all, and the spectacle of the Government in one minute claiming we had to be protected against King and the action is for our benefit, and the next minute complaining—let me say before that—asserting that the essence of the case, asserting it at other times that the essence of the case is unconscionable or illegal agreement between ourselves and King and then standing and explaining we double-crossed King by indicating we would make such an arrangement, and then we didn't make it, and he seems to complain now that we didn't carry out some arrange-

ment which previously he was condemning us for allegedly carrying out. He can't have it both ways on the facts. Confusion reigns supreme, it is compounded, I have lost track of the case.

The COURT: One thing I would like to have a remark from you on, Mr. Bernstein, if you will; I get the impression—I don't know where the proof lies—that International Color
was in real distress, that, as Mr. Raichle said, one of the
1523 reasons for this real distress was that King had ground
down the price where the stockholders no longer saw an
advantage in retaining it. What do you claim the record is with
respect to that? I have the impression that the image you paint
is that the sale was only made, not because of the depressed
price, a depressed situation of the stockholders, but, in fact,
they were under the hammer by NEA and this combination of
interests to force this sale.

Mr. BERNSTEIN: That isn't precisely the Government's—

The COURT: What about the first contention of Mr. Raichle, if there is evidence that indeed the stockholders were dying on the vine because they couldn't make a go of things; that is coupled with this in my recall—I don't know the truth of this—but I understand that when Greater Buffalo
1524 bought that plant they bought something they were not interested in in the way of equipment because it was an old, worn-out situation. I am talking about my recall of the argument that the big presses in there, which I don't remember the description of, was from Mr. Koessler's point of view a shaky item, and that indeed they had no real interest in the physical equipment of that plant. I want to hear what you understand the proof was concerning the success of that plant and the prospects of the stockholders at the time of the sale.

Mr. BERNSTEIN: Yes.

The COURT: From the proof in the case.

Mr. BERNSTEIN: Yes. Will you excuse me thirty seconds until I check up on what is in the evidence?

The COURT: I think you understand to me that is of some importance. If you have got something on the market that is cheap enough and unsuccessful and it is being offered
1525 for sale, that is one thing. If you acquire something by reason of pressures due to a combination of interests all focused on that organization, that, of course, could be something else.

Mr. BERNSTEIN: The Government contends there is a third thing. I will answer Your Honor's question directly. The record shows that they were—International was paying dividends to its stockholders, was paying its income taxes on profit, that while its revenue was diminishing, while it wasn't doing as well as it would have liked to have done or as well as any businessman might objectively say it should be done, it was nonetheless not bankrupt, not insolvent. The second point is, does the Government contend this sale was brought about solely because of the pressure of King? I believe Your Honor said NEA.

The COURT: I didn't say anyone. I said the combination of all three for some sinister purpose.

1526 Mr. STEVENS: You don't claim NEA had anything to do with that?

Mr. BERNSTEIN: I do not.

Mr. RAICHLE: You are saying the Government doesn't claim that?

Mr. STEVENS: Doesn't claim NEA had anything to do with the transaction.

Mr. BERNSTEIN: The Government doesn't claim it, that is correct.

Mr. RAICHLE: You don't claim there was any pressure from us to accomplish this?

Mr. BERNSTEIN: That's what I'm about to explain. The Government's contention is that you had a combination of circumstances there, nothing as the result of any one single thing, everything has to be viewed in the context, in the circumstances in which the companies found themselves.

The COURT: One of the things, from what I know and I think I have learned, is that that plant was in a depressed area?

Mr. BERNSTEIN: Correct.

1527 The COURT: What was this business of the Labor Union showing a vivid interest in this case? I have never understood that. Tell me why they were so interested?

Mr. BERNSTEIN: The Labor Union was interested at an early part of the case—I regret this has confused the issues before this Court now—

The COURT: There, there, like Senator Sparkman was allegedly somewhere; what was the concern of the Labor Union over Sylacauga—not Sylacauga—over Wilkes-Barre?

Mr. BERNSTEIN: The concern was that the Court imposed a temporary injunction and the plant could not open.

The COURT: They were sitting here on the application for the temporary injunction. There were labor people here then.

Mr. BERNSTEIN: They were concerned that if the injunction were removed that Greater Buffalo would transfer printing runs from Wilkes-Barre to Sylacauga, Alabama, and they 1528 were concerned they would lose jobs in Wilkes-Barre.

The COURT: Is Koessler going to fold up a half million dollar investment?

Mr. BERNSTEIN: The Government does not contend that Koessler or Greater Buffalo is required to. The Government contends we must view this case—

The COURT: I am looking for motive. Do you claim that behind all this, if it were a scheme, was to get it, wash it out at a cost of a half a million dollars and drop Wilkes-Barre?

Mr. BERNSTEIN: Not at all, not at all. The Government contends—

The COURT: Apparently there was going to be less work there in Wilkes-Barre. The Union thought they were going to lose out?

Mr. BERNSTEIN: There needn't be less work; with Greater Buffalo's talents, there could be increased employment in both Wilkes-Barre—if Sylacauga is owned by somebody else and you have competition between Sylacauga and Wilkes-Barre or competition between Sylacauga and Lufkin, if 1529 Greater Buffalo meets that competition by its own talent for economizing and making a better product, there is going to be more employment.

The COURT: Just a minute. You say there could be plenty of work in each place. One man virtually owns both, that is Koessler?

Mr. BERNSTEIN: And the Government contends he shouldn't.

The COURT: He was going to own both, he is interested either in running both full tilt, to the peak of efficiency, or not. Do you conceive he was going to fold the Wilkes-Barre Plant?

Mr. BERNSTEIN: I agree with that, he should want to operate both.

The COURT: Why wasn't that the prospect?

Mr. BERNSTEIN: The Government contends that under Section 7 of the Clayton Act—

The COURT: I'm not talking about the law; I am talking about realism. What was the Union's reaction to that; why were they so disturbed?

1530 Mr. BERNSTEIN: The Union apparently was not viewing it as Your Honor is viewing it. The Union wasn't viewing it from the standpoint of Greater Buffalo's right to do it but the—

The COURT: I'm not talking about the legal right to do it. Let's assume that there is no question that Koessler organized and controlled International Color Print and also controlled Sylacauga. Now, I do not understand why there was this concern, except the Government's concern, over that double ownership if both places were going into full production.

Mr. BERNSTEIN: Perhaps there shouldn't have been that concern. I would venture a reason then why there was.

The COURT: What occurred to me was this; it has been suggested in the lawsuit that International Color Print not only perhaps had labor trouble but was an archaic, old plant, that the prospect might be if the Sylacauga thing started to roll full tilt, close to the source of the paper—I was surprised to find that it didn't make any difference apparently how close you were to the paper plants the cost per roll was about the same—I would suggest maybe the idea was then Koessler's genius, as has been described here, would be that Sylacauga would surplant International.

Mr. BERNSTEIN: That is not the Government's contention. The Government's contention is that we have to view this act in the context of 1954 and 1955. The Court's analysis is taking the situation as it is today. The Government contends that the situation today is a continuation of the illegal conduct. If we view it in the context of 1954 and 1955, at that time the Government contends that International, while it desired to sell, while its stockholders had an interest to sell, that it didn't result—the sale didn't result solely from the pressure of 1532 King, but the Government contends that King's conduct and King's attitude, and because of the arrangement King had with Greater Buffalo, Greater Buffalo became the purchaser. Had it not been for that, the Government submits—although we have no crystal ball, nobody can say what might have been, if my grandfather hadn't had whiskers, he might be my grandmother—it is reasonable to assume that King,

having the interest it had in International, had it followed the law and not permitted Greater Buffalo to acquire International, then it would have had to make a decision, was it going out of the printing business, was it going to establish its own plant or was it going to do what Greater Buffalo Press did and acquire the International plant itself and make it into the worthwhile plant that Mr. Koessler has done today, providing more employment. I dare say the Union isn't complain-
 1533 ing now about fear of loss of jobs. As I understand it, there they were working longer hours and putting in more time than ever. This is not the gravamen of the offense. The gravamen of the offense is the third alternative that I suggested to Your Honor before.

The COURT: Mr. Bernstein, I don't want you to take any despair or comfort from my remarks. I am seeking the truth. I am trying to determine if there is any other explanation for what looked, in some instances, like possible acts perhaps designed to violate the law, that could be explained another way. That is the only reason I raise these points. When you have a scope of plus ten years of business activities and then comb back through the files of these businesses, you are bound to find instances that, isolated, look peculiar. I think this is true of any business which is complex, it is true of any individual affairs which are complex. I am trying to figure out why some of the straws blew in the wind the way they did here.
 1534

Mr. BERNSTEIN: I am trying to answer that with an explanation. My explanation for it is that although the plant was antiquated, it was of value to Greater Buffalo, and I respectfully submit that it would have been of value to any other commercial printer that King would have induced or selected or tried to get to take over that plant so that it could continue on in the printing business.

The COURT: This may be on a tangent, but you say "value to any other printer," I have a serious question about that. I suppose that would be collateral. We don't want to get into a comparison of the skills. Everybody concedes that Koessler can take an old press—I have heard this before in this case—and with his own genius develop it into something that
 1535 the average person cannot do.

Mr. BERNSTEIN: I have heard that said, too.

The COURT: Now, you say it's of value to every other printer.

Why weren't other printers, with their equipment, able to meet his measure? Would they buy an old plant with antiquated equipment, which you said did exist, and bring in another Koessler and develop it into something fine? What I'm looking for is a reason. Was this a dead horse on the market that only somebody who knew how to handle it could do something with it?

Mr. BERNSTEIN. The Government contends it was not. The Government contends some of these exhibits that it will offer again, that up until this time have been rejected in evidence, some of these exhibits will shed light on the subject and show that King was considering other alternatives, how else it could be done rather than Greater Buffalo.

The Court: I am getting into the act. We had our 1536 conference. I don't criticize anyone. We are going to try and get the evidence in and save the argument. I think it is enlightening. I'm in on the act now too. We will recess now.

(Thereupon, the court was in recess at 11:45 a.m.)
1537 (Proceedings resumed, pursuant to recess at 2:00 p.m.)

Mr. BERNSTEIN. With respect to the deposition of Frank J. Nicht, page 41, as background—this has not been previously designated to counsel for the defense, it is in response to a question that Your Honor asked yesterday concerning the effort made by the Government to examine Mr. Nicht with respect to some of these documents that have been offered yesterday as business records, and Your Honor will recall that the question was raised as to whether he was ever confronted head-on with it. I made a review of that and find that he had been. I would like to offer portions of his deposition with respect to that. The Exhibit P-13, which had been previously offered, is referred to in the portions of the deposition which I am about to read as Plaintiff's Exhibit 1, being Plaintiff's Exhibit 1538 1 of the deposition. At page 41,

"Q. Mr. Nicht, I show you Plaintiff's Exhibit 1——" which is now Government's Exhibit P-13 for identification—"and ask you to look at this document, consisting of three pages, and I'd like to know, one, whether or not you wrote and signed that letter to Mr. Ward Greene?"

"A. Yes, sir.

"Q. Referring now, Mr. Nicht, to the last paragraph on page one, I refer to this sentence: 'I have been able to make deals with Greater Buffalo Press which I do not think it would be wise to publicize.' I ask you, Mr. Nicht, whether you know what deals were involved?"

Mr. RAICHLE: Wait a minute, wait a minute, where does that appear? 42 isn't in my book. Wait just a second. The question was withdrawn, there is no answer to that question.

Mr. BERNSTEIN: We will continue on:

"Q. Mr. Nicht, you admitted signing this letter; is that correct?"

"A. Yes, sir.

"Q. I refer now to the next to the last paragraph and 1539 to the sentence which I referred to here, and I now ask you to tell us what these deals were, and I am quoting the word 'deals,' 'd-e-a-l-s' in the letter purportedly written by you, that you refer to in Plaintiff's Exhibit 1?"

Plaintiff's Exhibit 1 is now P-16. And then again an objection was made to the form of the question and Mr. Feldman said:

"Q. I will ask the witness to answer the question.

"A. They are set forth here, aren't they?"

I digress, apparently referring to Exhibit P-13.

Mr. RAICHLE: I object to that and move to strike it out. I move to strike out counsel's statement "apparently referring." The Court will draw its own conclusion.

Mr. BERNSTEIN: I know that. I am trying to trace this along in an orderly fashion so that the Court gets the Government's contentions.

The COURT: I have it.

Mr. BERNSTEIN: Then there is another objection to the question, colloquy by counsel, and then Mr. Feldman said: "I 1540 will not argue with the witness, but I will ask you what those deals were, and if he wishes to use Plaintiff's Exhibit 1 to refresh his memory, I have no objection." And the witness says:

"A. In that case, I refer to the letter.

"Q. Suppose you look at the letter, and if it refreshes your memory, fine, but I would like you to tell us now on the basis of your present recollection what those deals were?"

Then there was another objection between lines one to six, more colloquy—

Mr. RAICHLE: Wait a minute, the record should show that the objection was made by Mr. Climenko who was the counsel for Hearst.

Mr. BERNSTEIN: Then at line 15 Mr. Climenko, counsel for Hearst, said: "In view of your present comment, I object to your question as improperly expressed." And then the question was asked:

"Q. Let me ask you this: You refer in Plaintiff's Exhibit 1541 to certain deals being made. I ask you now whether as a factual matter certain deals were made on or about or immediately prior to May 26th, 1954?"

"A. Yes, sir.

"Q. Do you know now what those deals were?

"A. I can't remember what they were except those that I committed to writing here."

The Government now offers the portions of Exhibit P-13 that the witness referred to, only insofar as they refer to deals in the document as recollection past recording. The witness stated that he didn't remember them, he stated that those were the same that he referred to in the document. The Government, rather than offering the exhibit in evidence, would read into the record the portions of P-13 to which the witness referred when he said that he can't remember, "except those that I committed to writing here."

Mr. RAICHLE: Well, if the Court please, I object to 1542 that.

The COURT: Sustained. I point out that I am still considering it on other grounds, as an offer.

Mr. BERNSTEIN: Yes.

The COURT: Did you talk to Mr. Nicht about any more letters through Mr. Feldman?

Mr. BERNSTEIN: Yes, sir. Now, with respect to Exhibit P-10, which has been identified in the exhibit as deposition Exhibit 2, the witness was examined on page 47—

Mr. STEVENS: P-10 you are talking about?

Mr. BERNSTEIN: That is correct, that was identified as Deposition Exhibit 2. On page 47 the document is identified at lines 4 through 16, and then at line 18, Mr. Feldman asked this question:

"Q. Mr. Nicht, I show you Plaintiff's Exhibit 2—" which is now P-10—"and ask you to read this to yourself and tell us whether this refreshes your memory as to whether or not

you ever had any discussions, that is, telephone conversations, with Mr. Walter Koessler in regard to any specific account?

"A. This one here.

1543 "Q. I would like to know from you whether it refreshes your memory?

"A. Yes, sir.

"Q. I again ask you whether or not you had any telephone conversations with Mr. Walter Koessler in regard to any specific newspaper account? What is your answer, sir?

"A. I have had telephone conversations with him.

"Q. I am referring to the telephone conversations.

"A. Yes.

"Q. You have had?

"A. Yes.

"Q. Referring to the period now on or about January 4, 1954, do you know whether or not you had any telephone conversations with Mr. Walter Kessler in regard to any specific newspaper account?

"A. I don't remember.

"Q. I show you Plaintiff's Exhibit 2——" which is now P-10—"and ask you whether this refreshes your memory as to whether or not you had any telephone conversation?

"A. Yes, sir, I remember this. This refreshes me.

"Q. Prior to January 4, 1954, had you ever spoken with Mr. Koessler on the telephone?

1544 "A. Yes, sir.

"Q. About how many times a year did you speak with Mr. Koessler on the phone, do you recall?

"A. I don't know. I don't remember.

"Q. Prior to January 4, 1954, about how many times can you recall speaking with Mr. Koessler? Was it over ten, over twelve or was it one, two——

"A. I don't remember.

"Q. Had you spoken with him prior to this time at frequent intervals?

"A. I wouldn't call them frequent.

"Q. Would you say the number of times you spoke to him exceeded ten prior to that time?

"A. Over what period of time?

"Q. From 1950. That would be a four-year period.

"A. I think so.

"Q. Referring to January 4th, or thereabouts, 1954, do you recall whether Mr. Koessler telephoned you or whether you telephoned Mr. Koessler?"

"A. I don't remember that."

"Q. Do you remember at all having a telephone conversation with him, now, at that time?"

"A. I don't remember that distinctly, no, sir."

"Q. I asked you a moment ago whether Plaintiff's Exhibit 2— which is now P-10—"refreshed your memory as to whether or not you had a telephone conversation with him, and you said yes?"

"A. That's right."

The rest of page 50 was read yesterday. I will skip over to page 52 unless counsel wants me to read that.

Mr. RAICHLE. Go ahead.

Mr. BERNSTEIN. Page 52, line 11:

"Q. I want to know only as to the conversations you had with Mr. Koessler. Never mind what happened after that. During the end or during the middle of the conversation you had with Mr. Koessler, what did he say, summarizing it, and what did you say, summarizing your previous part of the conversation with him?"

"A. I can't remember that. I can't remember that."

And then Your Honor will see from page 52, line 13, another subject was gone into. On page 53, that was read into the record yesterday. Page 54 was read yesterday; page 55 was read in down to line 16. Then the examination went into another exhibit, Exhibit 3, and that continued on through page 69, and then at line 18 on page 69, I'll resume:

1546 "Q. Referring to Plaintiff's Exhibit 2— which is now P-10—"I ask you whether or not when you wrote or dictated this memorandum on or about January 4, 1954, whether at that time it was a correct statement or report of the telephone conversation you had with Mr. Walter Koessler?"

"A. I think so."

"Q. When you say 'think so,' is there any doubt about it?"

"A. No."

The Government offers this evidence as a recollection past recorded, contending that with respect to this document the witness had been questioned and several times repeated he did not remember it, stated it was true at the time it was made. It is offered on that basis.

The COURT: However it is offered, it still has the primary purpose of a declaration of an alleged co-conspirator, which you wish to be used against another alleged co-conspirator?

1547 Mr. BERNSTEIN: Yes.

The COURT: What else does it serve here except the declaration you would like the Court to accept against the co-conspirator?

Mr. BERNSTEIN: It's a little different in this respect—

The COURT: You don't take evidence in because you might find an isolated ground for its receipt, such as a past recollection recorded, without delving, in my opinion, into the purpose of it, the sole purpose is to use the incriminatory statement of one co-conspirator against the other?

Mr. BERNSTEIN: Yes, Your Honor. There is this feature to be considered; had Nicht been alive, had Nicht been on the stand here, Mr. Nicht having been one of the participants, having been questioned here with the opportunity of the defendants to cross-examine, if the witness had stated on the stand that he participated in an event with one of the 1548 defendants, and he is trying to testify concerning a conversation with that defendant, and he says he doesn't remember but he recorded the transaction immediately after the event, that the statement is true, it would be admitted regardless of the co-conspirator.

The COURT: I don't agree with you. The purpose still remains the same. You still have a reservation on my part of the acceptability of the exhibit based upon the things we have talked about. You must establish your case. Is there any objection on other grounds?

Mr. RAICHLE: Yes. I also want the record to show that I base the objection primarily on what Your Honor observed to be the grounds, and also on the grounds that Mr. Bernstein is mistaken; he said the record did refresh his recollection as to the conversation, and the best evidence and the proper way to have proceeded would have been to ask him from his 1549 recollection as refreshed what took place.

The COURT: Regardless of whether he adopted the letter on this deposition or not, I consider the purpose of the offer to be the same as it has been.

Mr. RAICHLE: That is right.

The COURT: On that ground, over your objection, I now sustain the objection as a past recollection recorded.

Mr. STEVENS: May we join in that objection?

The COURT: Yes.

Mr. BERNSTEIN: In view of Your Honor's ruling and to save time, may the record show that the Plaintiff will offer with respect to P-22, portions of the deposition from page 83, line 8 through line 20. Could we have the Reporter type them into the record without taking the time to read them at this time?

The COURT: Do you stipulate to that?

Mr. RAICHLE: Yes.

The COURT: Mr. Stevens?

Mr. STEVENS: Yes, we are willing.

The COURT: There is a section of the testimony, 1550 which Mr. Bernstein wants you to type in the record—

Mr. STEVENS: Perfectly agreeable.

The COURT: Which has to do with another exhibit, which one is that?

Mr. BERNSTEIN: Our Exhibit No. P-22, which is referred to in the deposition as Exhibit 4-B.

The COURT: It is stipulated that may be done.

Mr. RAICHLE: It is all right with us.

The COURT: Will you give Mr. Noel the pages?

Mr. BERNSTEIN: The reporter has been advised; page 86, line 8 through line 20;

"Q. I show you now Plaintiff's Exhibit 4-B through 4-D, and ask you whether or not these are memoranda typed or committed to paper under your direction and kept in the regular course of your business as sales manager of King Features Syndicate?"

"A. Yes, sir.

"Q. As far as Plaintiff's Exhibits 4-B through 4-D are concerned, to your knowledge would such memoranda, when committed to paper on or about the respective dates therein, be true and accurate statements of the facts reported therein?"

1551 "A. Yes, sir."

Mr. BERNSTEIN: Then on page 90, line 22, with respect to Exhibit P-67, which is 5-D in the deposition, and P-68, which is 5-E in the deposition, and page 91, line 2 through 7, and line 10 and line 11 through 23:

"Q. Mr. Nicht, I show you Plaintiff's Exhibits 5-A through 5-K, inclusive, and ask you to examine these exhibits, and I ask you whether these are memoranda which you made or had made at your direction in the regular course of your duties as a sales manager of King Features Syndicate on the dates indicated therein. I particularly call your attention to Exhibits 5-A through 5-B, which do not bear any initials on the memorandum so as to indicate the offer.

"A. Yes, sir.

"Q. Were these memoranda kept by King Features Syndicate in the regular course of their business after they were committed to paper?

"A. Yes, sir.

"Q. Would the same be applicable, namely the keeping of the records in the regular course of business of King Features Syndicate as regards Plaintiff's Exhibits 4-A through 4-D?

"A. That's right.

"Q. They also, that is, Exhibits 4-A through 4-D, were kept by King Features Syndicate in the regular course of their business?

"A. Yes, sir."

Mr. BERNSTEIN: Then on page 101, the reference to Exhibit P-66, that is deposition Exhibit 7-F, line 5 on page 101 through line 14:

"Mr. FELDMAN: I would like at this time to have marked as Plaintiff's Exhibit 7 memoranda sent by F. J. Nicht to Ward Greene and memoranda sent from Ward Greene to F. J. Nicht, and memoranda sent from F. J. Nicht to J. D. Gortatowsky, and memoranda sent from J. D. Gortatowsky to F. J. Nicht. In addition, memorandum sent from F. J. Nicht to F. C. McLearn. I ask at this time that the memoranda be marked as Plaintiff's Exhibit 7 with the following alphabetical descriptions:"

Mr. BERNSTEIN: Then skip to page 102, line 9 through 11:

"I ask that a letter dated November 4, 1955, from F. J. Nicht to Ward Greene be marked as Plaintiff's Exhibit 7-F."

Mr. BERNSTEIN: And then skip to page 106, line 6 through line 12, and with respect to that, the Government contends that the witness incorporated the document by reference into his statements.

Mr. RAICHLE: What?

Mr. BERNSTEIN: Into his testimony:

"Q. Referring to Plaintiff's Exhibit 7 again now, sir, as to the memoranda or copies thereof or letters which contain your name or your signature, would the statements contained in such memoranda, to your knowledge, at the time they were committed to paper, be true and accurate statements of the facts reported therein?"

"A. Yes."

The COURT: You make an offer of those; I make the same ruling to the objection which I assume will be the same. Objection sustained.

Mr. BERNSTEIN: Right. The offer includes—with respect to those documents where the witness testified they were true, the Government offers it as a recollection past recorded.

1554 The COURT: Same ruling.

Mr. BERNSTEIN: With respect to those documents where the deposition reflects that he incorporated the facts into his testimony by referring to the documents, the Government does not offer the document in evidence, just offers those portions to be read into the record.

The COURT: I take it from what you are saying, in some instances his recollection was refreshed and he may have testified. The balance you wish to be offered as a past recollection recorded?

Mr. BERNSTEIN: In some instances, they are offered solely on the ground of recollection past recorded; in other instances, he testified in part about the transaction and then he referred to the document for the remainder of the transaction, and with respect to those, the Government contends this is really incorporated by reference in his testimony and would wish 1555 to read into the record just the portions of the document which the witness referred to. For example, if the witness said the facts in this exhibit are true, then the Government would offer only those portions of the exhibit which are facts, not opinions or conclusions or comments or anything else. I take it Your Honor makes the same ruling?

The COURT: That is right.

Mr. BERNSTEIN: With respect to Exhibit P-19, which has been identified as Exhibit 9-G and P-24, they have been referred to in the deposition at page 112, line 14 to line 20:

"Mr. FELDMAN: I would like to offer as Plaintiff's Exhibit 9 memoranda which bear the initials in the left-hand corner as

'F.J.N.' and are directed to no individual. I would also like to offer as part of Plaintiff's Exhibit 9 a salesman bulletin number 14243, which bears the typewritten name F. J. Nicht."

Mr. BERNSTEIN: And then skip to page 117, line 3 through 10:

1556 "Q. Mr. Nicht, I show you Plaintiff's Exhibits 9-A through 9-O, inclusive, and ask you whether these memoranda and the sales bulletin number 14243 was prepared by you during the regular course of your business with the King Features Syndicate Division of the Hearst Corporation?

"A. Yes, sir."

Mr. BERNSTEIN: Then page 118, line 9 through 14:

"Q. As to the statements contained therein, and the sales bulletin and the memoranda prepared by you, are the statements therein true and accurate statements of the facts, as reported at the time the memoranda were prepared?

"A. Yes, sir."

Mr. BERNSTEIN: Very well, Your Honor. I now proceed to Topic 14. Topic 14, under the general heading, October, November 1955, NEA agreed not to compete with Greater Buffalo and subsequently not to compete with King, it had sufficient knowledge from which it should have reasonably known that King had some non-competitive arrangement with Greater Buffalo.

Mr. RAICHLE: This is a contention?

1557 Mr. BERNSTEIN: That is the contention, yes.

Mr. RAICHLE: I won't rise to argue about it. There is no evidence of it.

Mr. BERNSTEIN: One moment, Your Honor. P-44, P-45, P-46. P-44 formerly was Document 65. P-45 formerly was Document 63. P-46 was formerly Document 76. These are offered as against the defendant NEA only.

Mr. STEVENS: Now, may we have the numbers again?

Mr. BERNSTEIN: P-44.

Mr. STEVENS: I have it.

Mr. BERNSTEIN: P-44 is a document signed H.W.W. It has been stipulated that this document was prepared by or under the supervision of Herbert W. Walker, and the stipulation which shows that he during this time was the Vice-President of NEA. It is dated March 30, 1954, addressed to Eli Minton, who has been stipulated was a sales representative of NEA at that time. Document P-45 is a letter dated May 4, 1954, from

1558 Herbert W. Walker to John L. Blake, Scripps-Howard Supply Company, New York City. Document P-46, dated May 17, 1954, another document stipulated, which has been prepared by or under the supervision of Herbert W. Walker, also addressed to Eli C. Minton. The Government offers each of these documents in evidence, and offers them together because they relate to the same subject, and the Government would contend that reading them together they would bear out the Government's contention; P-44, P-45 and P-46.

Mr. STEVENS: If the Court please, NEA makes no point of the fact these are not documents from our files nor documents signed by Mr. Walker. We do object because they are really nothing more than normal business inquiries by the President of NEA, to try to find out what is going on in the business, a concern which was a small factor in the over-all color comic supplement field, trying to learn what the larger elements in the business were doing.

1559 The COURT: That goes to the weight you consider should be given to them?

Mr. STEVENS: That may be.

The COURT: They are offered here as part of your ordinary correspondence, between you and others.

Mr. STEVENS: These are really—well, two of them and between Mr. Walker and a sales representative.

The COURT: Do you say you do not consider these business records?

Mr. STEVENS: No, I am not saying that. I am saying I don't think they are relevant to any issue in the case.

The COURT: That goes to their weight as I see it. I will overrule you and receive them subject to the comment that the weight of them is something for argument.

(Thereupon Government's Exhibits P-44, P-45 and P-46, previously marked for identification, were received and marked in evidence.)

1560 Mr. MOORE: These are offered against NEA only?

Mr. BERNSTEIN: That is correct, offered for the purpose of establishing the knowledge that NEA had at that time.

Mr. STEVENS: Or the absence of knowledge?

Mr. BERNSTEIN: Or the absence of knowledge. The Government contends the offer is to show the knowledge, and I might add that the Government does not rely on any one document, but this group of documents, to show that situation.

P-44, first paragraph: "Dear Eli: This will be a report to you—"

The COURT: Can't we do this? Rather than reading, can't we agree to copy this in?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: Can't we agree to copy all these in?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: You see, I told Mr. Raichle—I know that he has things to do, and others have, as well. I want to give this case all the time it needs but I am targeted in at four o'clock. I hope we can meet it. So, I think rather—I am not going to 1561 listen unduly to these readings—I shall read them in the record. Why don't you refer to them and let Mr. Noel copy them in?

Mr. BERNSTEIN: Very well, Your Honor.

Mr. STEVENS: That is agreeable.

Mr. BERNSTEIN: The first full paragraph—perhaps I'd better do it this way so that if counsel wishes anything added to what I am designating, they would have the opportunity to do it.

The COURT: Have Mr. Noel copy the whole thing; any objection to that?

Mr. STEVENS: No.

Mr. BERNSTEIN: From the Government's standpoint, it doesn't address the Court's attention to the specific parts of the documents that way.

Mr. STEVENS: If the Court please, that is one of the troubles with the manner in which they are presenting their case. They want this record to read like a brief, and what they ought to do is introduce their evidence and let us discuss it at the appropriate times and in the ordinary course.

1562 The COURT: I consider that in the same light I would a deposition. If a person wishes to read parts, he may be required to read it all. I'm going to have you introduce the letters in evidence. For the reason one paragraph might temper and mellow another, you can comment on it now. You only offer it, if you wish, for certain paragraphs, don't read them, and then the balance of the letter will be received in evidence for whatever purpose it may have.

Mr. BERNSTEIN. The Government offers this document for the first two paragraphs and the first sentence in the third paragraph and the first four lines in the fourth paragraph up to the

end of the second sentence in that paragraph; and offers on page two the third full sentence in that second full paragraph.

The COURT: I can't see, Mr. Bernstein, how you can offer parts of a letter that may be of interest to your side of 1563 the case, because the letter is not divisible in that fashion. If they were isolated things, maybe both sides would stipulate half of the letter does not apply to this problem. It seems to me when you offer a letter, you offer it all the way.

Mr. BERNSTEIN: The Government offers the entire letter.

The COURT: Then why emphasize it? That is the subject for a brief.

Mr. BERNSTEIN: For this reason, unless—

The COURT: What you are doing—you are not offering it for certain paragraphs, you are pointing out to me, in substance, those paragraphs that you think are essential to your side.

Mr. BERNSTEIN: That is right, and also pointing out at the same time, as far as the Government is concerned, there is no need for the Court to trouble itself with reading the rest of the letter unless it chooses or unless the defense wishes it to be done.

The COURT: I certainly shall read it all. I won't take 1564 part of a letter that might be mellowed and tempered by another paragraph. I think it would be manifestly unfair if I did. It is all offered. You make more of one paragraph than another, or something out of a paragraph and nothing of another. We are just talking here, the letter is offered. You would like to comment on those things you would like me to look carefully at.

Mr. BERNSTEIN: It is different than that. The Government contends that, as far as it is concerned, if it wants to establish point A, and the letter has A, B, C, D, E and F, from the Government's point of view C, D, E and F do not relate to this lawsuit, shed no light on it, of course, that is not true in all cases, but in some cases, the Government wants to point out, as far as it is concerned, it is only urging that point A need be read. Now, it makes no difference, and if Your Honor 1565 believes it would be more desirable, there is no need to read any of this into the record, the documents speak for themselves. The exhibits will be in evidence. Now, it is only to the extent this will aid the Court in deciding on the motion—

The COURT: The only interest in this that I have in copying it into the record is it will have me jumping around look-

ing for exhibits. If it is going to be copied, it ought to be all copied, as it will be. You want me to take certain portions as carrying the point for you.

Mr. BERNSTEIN: Very well.

"Government's Exhibit P-44 in Evidence

MARCH 30, 1954.

Memo to: Eli Minton, Dallas.

"DEAR ELI: This will be a report to you, and will also serve as a report to others in NEA, on the projected color printing plant in the Southwest.

1566 "Since you first reported the rumors of activity, which was at about the same time we received a report from John Blake of Scripps-Howard Supply about the enlargement of the Lufkin Papermill and the setting up of a plant there by Greater Buffalo Press, I have been checking various sources. You also reported the possibility of color plants being established down there by Sol Bloom and Whitmer, the Houston Printer, but my information more or less confirms the impression that you gained that neither of these parties is apt to set up a plant.

"I first checked with Kenneth Koessler, since Walter, the head guard there, was in Florida at the time. It isn't necessary to go into any detailed report of the talks with Kenneth, other than to say that he reported that the Koessler's did not want to set up a plant there, felt there was really not enough business to justify it, realized that this would simply increase the overhead for them, since their plants at Buffalo and Dunkirk could print everything in the Southwest now without being hard-pressed. But, he said they might be forced into it to protect the business they had in the Southwest, and that

1567 present customers wanting to get the comic sections at lower rates had approached them on opening a plant down there.

"After Walter's return, I want to Buffalo to see him. Walter said they had not yet definitely decided to go ahead with the plant, but that may be more of a way of saying that everything has not been settled, because I believe they intend to go ahead. He said the movement really started when Fred Danner, the Akron Color Printer, went down to explore the field, and as a result, the Koessler's best clients down there told him they

thought they ought to open a plant at Lufkin, next to the paper-mill. Walter went down to check. Kurth, at the Lufkin Mill, offered to put up a suitable building which the Koessler's could acquire over a term of years on a rental purchase basis, and the Lufkin Mill, with its plans to install a third papermaking machine, would be able to supply the paper. The Koessler's still have the color press purchased some years ago from the Detroit News. It is still in storage, and this would be the press which would be installed there. I mentioned to Walter that Ted Dealey had written someone at the plant would be operating by January 1. Walter says that that would be absolutely impossible, and if they do go ahead, it will take closer to two years than nine months. He thought it would take nearly 1568 that long to build and get the paper machine installed.

It might not take more than five or six months to put up the buildings, but the press installation is quite a job.

"John Blake confirmed that the Lufkin Mill has decided to install a third paper machine, and he thought it could be an operation and in not much more than a year. Scripps-Howard, incidentally, is a sizable stockholder in the Lufkin Mill, and Blake is going after some additional information for me.

"Walter said that the set-up became more attractive than they assumed it would be when they found out that a new plant could be obtained without laying out a lot of capital and that a press they already have could be installed. Also, he said there was a differential of \$12 a ton in the price of paper as compared with the Canadian Mill delivered price, but Blake says this isn't the case. Lufkin has been selling at \$126, as compared with \$125.50 for Canadian paper at Buffalo, and \$130.50 for Canadian paper in Texas.

"The price of paper, of course, is very important. When we originally started thinking about a Southern color plant 1569 some years ago, I liked the Lufkin set-up, because paper was then obtainable there at the Canadian base price. But, I understood that shortly thereafter the price changed to the Canadian zone price, and that meant that you could ship the comic sections from Buffalo for very little more than the added transportation cost of Canadian paper delivered in Texas. The Koessler's now have the three runs at Dallas, Houston, and San Antonio, and Walter said they needed a lot more work than that to justify the Southwest plant. He had apparently sounded out the Fort Worth Star-Telegram, and reported that Bert

Honea was pleased with his present operation by which he prints his own section and that of the Times-Herald. He thinks he's making some money out of it and, of course, has a brand new press that he naturally doesn't want to scrap. Incidentally, Walter said that King is no longer in the picture with this Star-Telegram work, that arrangement having been terminated some months ago. Other runs which Walter said he ought to have in order to come out were Oklahoma City, which also has

1570 a newly rebuilt press, Tulsa, Little Rock, Memphis, New Orleans, and Houston. He professed not to be interested in smaller runs. We have never found the Koessler's competitive with King on the smaller runs, and if they cling to their ideas as to makeready cost, etc., they never would have come up with a good price on the Pappert run. They really prefer not to handle this smaller stuff.

"As you will recall, we have discussed a Southern plant with the Koessler's for several years. On the last exploration of possible sites, business, etc., I again recommended the Southwest, but the Koessler's still felt that it ought to be in the Southeast, probably around Chattanooga. In those discussions, it was evident to me that it would possibly be difficult to be in business with the Koessler's. I asked Walter when I saw him last week whether he wanted any partners in the Southwest venture and he replied that with the small amount of capital which would be necessary to get the plant going because of an advantageous building set up and the press which they had in storage, they felt they preferred to go it on their own. Back of that, of course, may be some resentment at our World Color set up.

"As to World Color, it has been reluctant to push off into a full blown supplement printing operation until it can get a better manning set up out of the Union at St. Louis, and

1571 it has been working on that for the last few months. Confidentially, it involves switching from the Newspaper Pressmens Union to the Commercial Pressmens Union, and that requires some deft maneuvering. Also, it will be extremely difficult for World Color to handle ten and fourteen-page sections without making some rather costly changes on the presses.

"In view of the Southwest activity, I have pointed out to them the importance of getting going to the extent possible right away.

"They now have the idea that possibly the best set-up would be to figure on printing the supplements at their new plant in Sparta, Illinois, and then trucked to St. Louis for baggage shipments. With your own truck the cost should be quite low. One reason for this is that a new and very fast press has just been installed at Sparta, and the manning situation there is okeh."

"I'm to have a session with them in St. Louis the first of next week, and I hope that we can clear things so that we can get a green light to go after any and all business in the Southwest. It might be necessary for a while to try to pick our spots down

there. World Color keeps assuring me that it is anxious 1572 to get into the supplement printing work and that it is anxious to do it with NEA. As you know, we have a written agreement with them that it will be with NEA, and I am sure the delay does not indicate any desire to back away from our arrangement or back away from supplement printing.

"Sincerely,

H. W. W."

Government's Exhibit P-45 in Evidence

"MAY 14, 1954.

"Mr. JOHN L. BLAKE,
Scripps-Howard Supply Company,
230 Park Avenue, New York, New York.

"DEAR JOHN: Ever since you gave me the surprising news that the Koessler's are not going ahead with the Lufkin Plant, I have been lining up all the facts we have that might apply to a Lufkin operation.

"We'll go over everything when Fred Ferguson is out here for a session next week. So far, I can't get enthusiastic about the possibilities of setting up a plant down there.

"I believe I mentioned on the phone that, for so many points in the Southwest, the delivery cost from St. Louis, even though the distance is greater, is no more than it would be from Lufkin,

because of very favorable baggage rates from St. Louis. 1573 As a matter of fact, Lufkin is only on one railroad which handles baggage, and you'd have to truck either direct to the newspapers, or to some point on the lines that can reach more points in that area. Trucking is more expensive than baggage, unless you make a large investment for your own trucks

and then work it out in payloads for return trips. As you well know, the cost of any new plant is very high these days and, it takes a large volume of printing to break even on a very high investment. The Koessler's are very good at figures and if they can't see it except at a large paper discount, I'm inclined to think they're right.

"World Color in St. Louis can come out on the Southwest business, because it has a lot of comic book and other color work in its plants. In any event, after we have our huddle, even though we are not inclined toward the Lufkin project, I would like to talk to Lew Calder. Thanks for keeping me so well informed.

"I have a copy of Bud Messing's letter to you. He wrote it before I told him that any purchase from the Supply Company would be through NEA. Either way will be agreeable with him. It might be well to consider direct sales to him covering our work. In that way World Color, instead of NEA, would be supplying the money to carry the paper account with you. With best wishes,

1574 "Sincerely,

HERBERT W. WALKER."

Government's Exhibit P-46 in Evidence

"MAY 17, 1954.

"Confidential

"Memo to: Eli C. Minton, Dallas.

"DEAR ELI: I am enclosing a copy of a letter to John Blake, for your information, and it tells a surprising story.

"When I talked with Walter Koessler some weeks ago, he told me about the \$12 a ton discount on paper, that it seems like he and the Lufkin Mill people were talking about entirely different figures and didn't know it.

"The Canadian delivered price in Texas is around \$138 a ton. It is \$131 at the Port and delivery upstate will run another \$6 to \$8. Lufkin's price for paper is \$126, which is \$12 under the Canadian price, but Walter thought he was to get it at \$12 under the \$126 price, or \$114.

1575 "When he found that out, he said he was not interested in going ahead, according to the word John Blake obtained from Calder, whose father is heavily interested in Lufkin and is the New York representative of the mill. It's

hard to believe that everything could have gone this far with this mix-up on the very important point of paper cost. At the Koessler party at the Stork Club, Walter was telling everybody that they were going ahead with the Southwest operation.

"I had some difficulty in straightening out this paper price business, and it was only after I had the session with the old master of cost, Houston Harte, that I was really in the clear. It was then that I was able to confirm with pleasure my belief that the actual paper price at Lufkin will be about the same as at St. Louis—\$126 vs. \$127—and that with the favorable shipping rates out of St. Louis we can be completely competitive with the Lufkin Mill at most points.

"From the start, Kenneth Koessler has been opposed to the Lufkin deal. He has said all along that the set-up would simply take work out of their Buffalo plants when these plants are not now up to capacity, and increase the overhead 1576 through the Lufkin set-up, which is bound to be expensive even under the best of conditions. He also has felt that there simply wasn't enough long-run stuff in the Southwest to make the plant profitable.

"With all the money you have hanging on trees down in Texas, it is, of course, entirely possible that someone else may start the plant.

"We're doing some checking on baggage out of Lufkin, but it looks like it isn't a good baggage point. If you truck to some point on Missouri Pacific, for example, which has very low baggage rates, that's going to cost money. The S-P seems to be the only road with baggage service out of Lufkin. While we want to do some checking, I think our set-up with World Color is so good that we will not want to go into the Lufkin set-up.

"Sincerely,

H.W.W."

Mr. BERNSTEIN: I will just identify the document and ask that it be copied into the record.

The COURT: All right.

Mr. BERNSTEIN: Document P-47 is offered as against NEA only. It is a letter dated June 9, 1954, from Eli Minton, a 1577 stipulated sales representative of NEA, to Herbert Walker, stipulated as the Vice-President of NEA. It is offered in evidence.

Mr. STEVENS: I make the same comment about relevancy; otherwise, no objection.

The COURT: Same ruling.

(Thereupon, Government's Exhibit P-47, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-47 in Evidence

"DALLAS,
June 9, 1954.

"Mr. Herbert Walker, Cleveland.

"DEAR HERB: Yesterday I got some more information on the Lufkin Greater Buffalo Plant from Jim Chambers of the Dallas Times Herald. Jim attended the recent meeting in Dallas with one of the Koessler's, Ted Dealey, Bert Honea and others, re which Millard Cope reported.

"Jim says GB will definitely set up a plant and are shooting for the first of the year. He also said King has a working 1578 arrangement with GB-Lufkin whereby they can put runs into that plant; but he is almost sure King has no financial interest in the plant. As you know, the T-H section is now printed at Fort Worth Star-Telegram. Jim said King has no lease on that press and never has had; that King took the run into Fort Worth to save the T-H transportation and if they elected to put it in Peoria or elsewhere, the T-H couldn't do anything about it as the contract is with King. Jim said that when the King contract expires he will see if he can make a deal direct with the Star-Telegram.

"According to Jim, Bert Honea's interest in the Lufkin Plant is to get a market for more Lufkin paper which would enable the mill to add the third unit as Honea is a director of the papermill and Star-Telegram has stock; that Honea did try to sell their color press to Koessler but they weren't interested, one reason being the press jumps four pages and is twenty pages capacity. Jim knew that the old Detroit News color press is to be installed in Lufkin.

"Jim said there is yet going on discussions re the price of paper at Lufkin but the understanding is that the price 1579 will be made satisfactory.

"GB now has some contracts on comic sections and others will come along as contracts expire, according to Jim.

"Seems to me GB is going to put a plant in Lufkin.

Best regards,

ELI MINTON."

Mr. BERNSTEIN: P-48, Your Honor, another letter offered against NEA only. A letter stipulated prepared by Herbert W. Walker, Vice-President of NEA, to Eli Minton, dated October 13, 1954.

Mr. STEVENS: Same position.

The COURT: Same ruling.

(Thereupon, Government's Exhibit P-48, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-48 in Evidence

"OCTOBER 13, 1954.

"Memo to: Eli Minton, Dallas.

"DEAR ELI: Regarding your report on the Lufkin Printing Plant, I was talking to Kenneth Koessler the other day and he told me that the Lufkin Plant was still a long way from operation. He indicated it wouldn't be running until early in 1956.

Sincerely,

H.W.W."

Mr. BERNSTEIN: P-49, Your Honor, is offered as against NEA only. It is a letter dated February 1, 1955. It is a carbon copy of a letter by Herbert W. Walker to Mr. John W. Frierson, Birmingham Post-Herald, Birmingham, Alabama. Attached to it is an original letter from John W. Frierson to Herbert W. Walker, and the Government contends P-49 consists of two pages, the first two pages out of the carbon copy of a reply to an incoming letter, which is the third page of that exhibit. The Government offers it against NEA only.

Mr. STEVENS: We object to the attachment, Your Honor. I don't think Frierson's letter is proper, is a proper element to be introduced. Our position on Walker's letter, the first two pages of the exhibit, is that we do not think it is relevant, otherwise we have no objection.

The COURT: All right, overruled, received.

(Thereupon, Government's Exhibit P-49, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-49 in Evidence

"FEBRUARY 1, 1955.

"Mr. JOHN W. FRIERSON,
"Birmingham Post Herald,
"Birmingham 2, Alabama.

"DEAR JOHN: Thanks very much for your recent note concerning the new plant which International Color Printing is planning at Sylacauga, Alabama. I took your letter with me to New York and John Blake of the Supply Company was able to get definite confirmation from Mr. Watt of the Coosa River Mill. We had heard rumors about it.

"I have not yet been able to establish just what the play will be. International prints exclusively for Hearst 1582 (King Features) at its two plants at Wilkes-Barre and Peoria. King has the bulk of the business in the Southeast, and as I understand it, plenty of capacity at the two northern plants. We have a number of smaller runs in the Southeast and Greater Buffalo Press (The Koessler's) has sizable runs at Miami, Mobile, Atlanta and Nashville.

"The report John Blake obtained was that a meeting was held last week to finalize plans.

"The important thing will be the price of paper and Mr. Watt told John only the regular rates would apply. If that's the case, as I understand it, the short trucking distance will not be a factor, but I wouldn't be surprised if some kind of a deal would be worked out.

"Unless it is, it would seem that you could print the sections in a large established Northern plant and ship them South for less than you could bring them out of a new and very costly plant in the South. All printing plants are costly these days. The color printing business is subject to very keen competition, particularly since the bottom has fallen out of the comic magazine market. With the fancy new plant costs, it is certainly

a \$64 question as to what moves we should make with 1583 Buffalo Color Press.

"NEA recently made an arrangement with World Color Printing in St. Louis which enables us to get into a good portion of the Southeast at a reasonable cost. We have been printing the section for the combined Jackson, Mississippi paper there.

"I imagine that International may be influenced by the fact that it has a very high labor cost at Wilkes-Barre.

"I don't know whether your letter meant that you still have some real estate to rent. If you do, it would be a real pleasure to come down and see you, even though we might not have any intention of renting it.

"Earl Anderson from our Cleveland NEA office is now general manager of Buffalo Color Press, with Leon Herman continuing as President. Leon has had eight or nine coronary attacks which amazes his doctor. The little guy keeps bouncing back in great shape, and spends more than half of the day at the office most of the time.

"I'll appreciate it if you will pass along any more information you may pick up on this new plant. Mr. Watt told John it would save the Birmingham News \$500 a week on the delivery cost of its sections. With the newly announced \$20,000,000 International Mill, we're really getting some newsprint capacity in the South and someday it ought to pull down that high newsprint price.

"With kindest regards and best wishes,

"Sincerely,

Herbert W. Walker."

Government's Exhibit P-49 in Evidence (Attachment)

"BIRMINGHAM 2, ALABAMA,

"January 14, 1955.

"Mr. HERBERT W. WALKER,
Vice-President and General Manager,
NEA Service, Inc., 1200 West
3rd Street, Cleveland, Ohio.

"DEAR HERB: I have heard from reliable sources that the International Color Printing Corporation is seriously contemplating building a plant in Sylacauga, Alabama.

"I was told that they intend to print about 2,000,000 comics in this plant. They will go after papers in this territory which they do not have—Tampa and Jacksonville, Florida were mentioned.

"If they locate at Sylacauga they would be approximately ten (10) miles from Coosa River Mills. It would cost them about four cents (4¢) per ton mile. I am sure that even you, with your great love for the almighty dollar,

will admit is a low cost. The International people have been looking into our labor contracts, particularly the Pressmen and the Mailers. It seems that these people have been negotiating with the pressmen in Wilkes-Barre since March 1954.

"I am not trying to tempt you, Herb, but I felt that you might like to have the above information."

"May 1955 in the years to come be good to you and your family."

"Sincerely, JOHN W. FRIERSON."

Mr. BERNSTEIN: With respect to P-50, Your Honor, memo for the files, dated February 9, 1955, prepared by H. W. Walker, stipulated as Herbert W. Walker, Vice-President of NEA, offered against NEA only.

Mr. STEVENS: On the matter of relevancy, objection.

The COURT: Same ruling.

(Thereupon, Government's Exhibit P-50, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-50 in Evidence

"FEBRUARY 9, 1955.

"Memo : For the files.

"At my request, Leon Herman called Vince Garvey, general manager of International Color Printing Company at Wilkes-Barre, and without any beating around the bush asked him whether International will open a new color printing plant near the Coosa River Papermill near Birmingham, Ala.

"Garvey confirmed our previous information that the plant had been definitely decided upon. At the present time the location has not been determined, but it probably will be in one of two small nearby towns—Sylacauga or Childersburg. These places are thirty and forty-two miles southeast of Birmingham. Expectation is that the plant will be going by January 1, 1956. So far, no break on the paper price has been obtained from Coosa River, but International is still hopeful. This confirms statements made to John Blake by mill representatives,

1587 who also said that there will be no break.

"International will continue its plants at Peoria and Wilkes-Barre. The decision to go into the Southeast was made according to Garvey, because International is now doing about 90% or 95% of the supplement printing in that area. His esti-

mate is on the high side, but King does have most of the business down there.

"The Alabama Plant will work under the same arrangements as the two Northern plants, as far as King Features are concerned. In other words, work will be done only for King Features, at least in the newspaper field.

"Garvey said he had very little information concerning the Koessler's plans for a plant at Lufkin, Texas, but thought the Alabama plant would be in a good position to cover some sections of the Southwest.

"Practically all shipments will be made by truck, since railroad facilities are not good and trucking costs are believed to be generally cheaper. The Company may purchase some trucks to handle the shipments.

H.W.W.

"P.S. The Coosa River representative had previously told John Blake that there were 55 supplement customers in the Southeast territory and that King, International is now printing for 42 of them."

Mr. BERNSTEIN: P-51, offered as against NEA only, a letter from Herbert W. Walker of NEA, to Walter Koessler, Greater Buffalo Press, Inc., dated August 2, 1955. It is offered against NEA only.

Mr. STEVENS: No objection.

The COURT: Received.

(Thereupon, Government's Exhibit P-51, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-51 in Evidence

"AUGUST 2, 1955.

"Mr. WALTER KOESSLER,
"Greater Buffalo Press, Inc.,
"302 Grote Street, Buffalo 7, New York

"DEAR WALTER: We salute you as the 'Color Printer' of the country as a result of your purchase of International Color Printing.

"The news came as quite a surprise to me, but I want to congratulate you on putting over what must be a whale of a deal. As one of your customers, I would like to go over the new set up with you in the near future. I expect to be in Buffalo within a week or ten days, and I will give you a call a day or two in advance to make certain you will be there.

"Our new One-Bite etching process looks mighty good now, particularly for color comic work, and if you still want the machine for which you gave me a verbal order some weeks ago, we can give a definite delivery date.

"With best wishes for the success of your expanded organization.

Sincerely,

HERBERT W. WALKER

Mr. BERNSTEIN: Now, moving to the next topic, Topic No. 15—strike it out. In view of the way the exhibits are going in, I might state to the Court that I believe it will be helpful if I tell you what the Government contends with respect to 1590 these three documents; or would Your Honor prefer to have them in the form of a brief?

The COURT: I would rather have that in letter form or brief form, with copies to your opponents, for the purpose of a reply.

Mr. BERNSTEIN: Yes, sir. Topic 15: These documents are offered for the purpose of showing that the Greater Buffalo acquisition of International eliminated potential competition between Greater Buffalo and International for printing in the South. Document P-53 is a document formerly known as Document 48, prepared by Joseph J. Gorman, dated May 26th, 1954, report on possibilities of color printing plant in or near Birmingham. It is offered against the defendant International only.

Mr. RAICHLE: He offers this only against International Color Printing? A strange development evidenced by that offer. The complaint cites International Color Printing is made a 1591 party only for the purpose of relief. There is no charge of wrongdoing against International Color Printing. It is, on its face, a document prepared by somebody, Mr. Joseph J. Gorman, for International Color Printing, long before—indeed more than a year before the acquisition by Greater Buffalo Press of the stock of International Color Printing. Mr. Gorman is alive, he is available, amenable to the process of this Court and there is no basis, I submit, in support of an objection, this hearsay should be received even as against International Color.

The COURT: Now, International Color—

Mr. BERNSTEIN: Is the defendant. This is offered as an admission made by the defendant, as against the defendant who wrote it. If Your Honor will recall, included in the charge of this complaint is a violation of Section 7 of the Clayton Act,

1592 which provides: "No corporation shall acquire the stock of a corporation where the effect may be substantially to lessen competition in some line of commerce."

The COURT: This predates the acquisition?

Mr. RAICHLE: More than a year.

Mr. BERNSTEIN: That is correct.

Mr. RAICHLE: There is nothing in Section 7 or anywhere else that makes it wrongdoing on the part of a corporation, International Corporation, when its owners sell stock of the corporation.

Mr. BERNSTEIN: No relief could be offered as against International unless the violation of Section 7 has been established. This is the purpose of establishing the violation of Section 7, as far as International is concerned.

The COURT: I don't want to take any more time. I will reserve decision on that offer, brief it for me and I will make a decision on it.

Mr. RAICHLE: Very well.

The COURT: The reason you must do that, I don't want 1593 to take the time to read three pages that I haven't read before. We will resolve it that way. Have Mr. Feldman make a note of it and bring it to my attention at the proper time for final action.

(Thereupon, Government's Exhibit P-53, previously marked for identification, was received and marked in evidence.)

Mr. BERNSTEIN: Exhibit P-54 for identification, Your Honor, is the minutes they had for a Board of Director's meeting of International Color Printing Company, Inc., dated July 28, 1954. It is offered in evidence.

Mr. STEVENS: Against whom?

Mr. BERNSTEIN: Against all defendants.

Mr. RAICHLE: Well—

Mr. STEVENS: I certainly object to it.

Mr. BERNSTEIN: I offer it for the purpose of showing the action taken by the Board of Directors at that meeting 1594 and the Government knows of no other way that it can establish the action taken by a Board of Directors of a corporation except by introducing the minutes of the Board of Directors of that corporation to show the action taken, and not for the truth of any statements that are contained in there, except for the fact that action—

The COURT: These are truly business records, aren't they, kept in the course of the business of the corporation?

Mr. BERNSTEIN: Absolutely, Your Honor.

The COURT: All right. Now, is there any objection, not to their weight, not to the proof, but to the fact they are business records?

Mr. STEVENS: I don't see how they can affect NEA, Your Honor.

The COURT: Relevancy we'll pass on later. I am receiving them as minutes of the corporation.

Mr. STEVENS: Are they only minutes for a meeting of July 28, 1954?

1595 Mr. BERNSTEIN: That is correct.

Mr. STEVENS: You better look.

Mr. BERNSTEIN: Excuse me, I'm sorry, I apologize. The first two pages refer to the minutes of that meeting. The third page refers to a meeting of October 4, 1954. The next page refers to a meeting of October 21, 1954. And the next page refers to a meeting of December 28, 1954.

The COURT: All minutes of the same corporation?

Mr. BERNSTEIN: Yes, Your Honor.

The COURT: Do you have an objection to those or not? Their relevancy is something else, and their weight. I am talking about the form and their receipt here for the consideration of the Court.

Mr. RAICHLE: They are business records. I believe they are still hearsay as to us.

The COURT: Overruled, received.

Mr. STEVENS: They are not only hearsay to NEA, but I think there certainly has to be some connection between NEA 1596 and International Color Press, because Your Honor will recall that at an earlier stage, in talking about the contract between King, I believe, and International Color Press, I specifically ask if there was any claim that had any pertinency or was being offered against NEA, and Mr. Bernstein was candid enough to say no. He should do likewise at this time.

The COURT: I am going to receive those, gentlemen; overruled.

(Thereupon, Government's Exhibit P-54, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-54 in Evidence

"INTERNATIONAL COLOR PRINTING COMPANY, INC.,
"WILKES-BARRE, PA.,

"July 28, 1954.

"A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the Hotel Biltmore, New York City, on Wednesday, July 28, 1954,
1507 at six p.m.

"Present, Joseph J. Gorman, Ralph R. Govin and William S. McLean.

"The president announced he had several meetings with representatives of King Features and one meeting with officials of the Hearst Organization and that they were insistent that this company establish a printing plant in the South, stating quite frankly that they would be required to give their Southern business to our competitors if we failed to do so.

"The reports to stockholders regarding the Coosa Pines location were discussed and the President was authorized to advise the Coosa River Paper Company that this company was interested in a contract for the purchase of newsprint and in having the paper company erect a building for the purpose of leasing it to this company so that this company can set up its presses and equipment and start a printing plant at that location.

"The President was authorized to negotiate a long-term contract with King Features which would assure this company of amortization of the cost of transporting and setting up its presses and other necessary equipment at the Coosa Pines location.

1598 "The President was also directed to determine the cost involved in the establishment of a Southern plant and to negotiate a loan to defray such cost. All contracts and agreements in connection with the establishment of a Southern plant, as well as the financing thereof to be subject to the approval of the Board before the final contracts or evidence of indebtedness are executed or issued.

"There being no further business, the meeting was adjourned."

"INTERNATIONAL COLOR PRINTING COMPANY, INC.,**"WILKES-BARRE, PA.,****"October 4, 1954.**

"A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the offices of the company, 268 George Avenue, Parsons, Wilkes-Barre, Pa., on Monday October 4, 1954, at 2:00 p.m.

"Present: Joseph J. Gorman, John W. Booth and William S. McLean.

"The President announced that he had not been able to come to an agreement with King Features regarding a long-term contract and the erection of a Southern plant, but

1599 expected to have a meeting with representatives of King Features in New York on October 21, 1954, and he would like to have a meeting of the Board of Directors called to meet at the Hotel Biltmore in New York at six p.m. that evening for the purpose of considering the proposals of King Features. The Secretary was directed to send notices to the Directors of said meeting.

"The President reported on the earnings of the company for the third quarter of 1954 and it was decided that a dividend should be declared.

"On motion made and seconded the following resolution was passed:

"RESOLVED: that the sum of \$8,700 be and is hereby appropriated and set aside from the surplus profits of this company for the payment of a quarterly dividend of 17.4% upon its outstanding stock for the third quarter of 1954, said dividend to be paid on the 14th day of October 1954 to stockholders of record as shown by the books of the Company at the close of business on the 10th day of October 1954.

"RESOLVED: Further that the Treasurer of this Company be authorized and instructed to give notice of such dividend and to pay the—"

1600

"INTERNATIONAL COLOR**"PRINTING COMPANY, INC.,****"WILKES-BARRE, PA.,****"October 21, 1954.**

"A special meeting of the Board of Directors of International Color Printing Company, Inc., was held at the Hotel Biltmore, New York City, on Thursday, October 21, 1954, at six p.m.

"Present: Joseph J. Gorman, May G. Scofield, Ralph R. Govin and William S. McLean.

"The President announced that he had met with representatives of King Features for the better part of the day, and immediately prior to the stockholders meeting, but there were certain details that could not be ironed out and that no contract has as yet been tentatively agreed upon. He informed the stockholders that there were certain additional lists of costs and transportation service that King Features desired before entering into final negotiations. The President was authorized to submit the schedule of costs requested by King Features.

"The President expressed disappointment at having called this meeting, but stated that had he been able to reach an agreement with King Features there were certain things 1601 that would have to be acted upon immediately so that we could get started with the Southern plant.

"A general discussion was held regarding the desirability of the Coosa River area as a location for a Southern plant, transportation savings that would be effected by the location of a plant in that area. Attention was also called to the fact that the operation of the third plant would increase the overhead to the extent that the transportation savings would just about be eliminated. There being no further business, the meeting was adjourned."

"INTERNATIONAL COLOR PRINTING COMPANY, INC.,
"WILKES-BARRE, PA.,

"December 28, 1954.

"MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

"A meeting of the Board of Directors of International Color Printing Company was held, pursuant to notice at the office of the Secretary, 818 Miners National Bank Building, Wilkes-Barre, Pa., at two p.m. on Tuesday, December 28, 1954.

"Those present were: Joseph J. Gorman, John W. Booth, William S. McLean.

1602 "The President announced that the meeting was called for the purpose of declaring a dividend for the fourth quarter of 1954, stating the amount of the profits of the Company for the first eleven months of the year and advising that in his opinion the regular quarterly dividend could be paid.

"On motion duly made and seconded, the following resolution was adopted:

"RESOLVED that the sum of \$8,700 be and is hereby appropriated and set aside from the surplus profits of this Company for the payment of a quarterly dividend of 17.4% for the fourth quarter of 1954 on its outstanding stock, said dividend to be payable on January 3, 1955, to stockholders of record on the books of the Company at the close of business on January 2, 1955.

"The President called attention to the fact that his contract with the Company, dated November 15, 1949, provided for the payment of 10% of the annual operating profits of the Company, such profits to be computed before deductions and charges for depreciation and before deductions for any interest on notes payable to the Govins.

"The President then stated that due to the fact that 1603 the Company had during the current year paid the 1954 vacation pay due its employees and charged the same against the operating income for such year and had also set up a reserve for a 1955 vacation pay of such employees and charged the same against the operating income for 1954, it resulted in a decrease in the salary to the extent of 10% of the amount of such reserve for the 1955 vacation pay charged against the operating income for 1954.

"The President also called attention to the fact that there would be a substantial deduction from operating income representing charges of costs of moving and setting up equipment in the contemplated Southern plant in that such costs so charged to operating income would further substantially reduce his salary.

"The President advised that he had discussed these matters with Mr. Govin and Mrs. Scofield, the beneficial owners of the stock of the corporation, both of whom are directors of the corporation but were unable to attend this meeting, and that both Mrs. Scofield and Mr. Govin had agreed that in determining the salary payable to the President under his contract the operating profit for such purpose, should be computed before deduction of the 1955 reserve for employees vacation pay during the year 1954 and should hereafter be computed before deductions for costs of moving and setting up equipment in the contemplated Southern plant.

"Then it was regularly moved and seconded that the following resolution be adopted:

"RESOLVED, whereas the agreement existing between the International Color Printing Company and Joseph J. Gorman, dated the 15th day of November 1949, provides inter alia, for the payment to Mr. Gorman of additional salary in the amount of 10% of the annual operating profits and that such profits shall be computed before deductions and charges for depreciation and before deductions of interest or notes payable to the Govin family; and

"WHEREAS, by resolution dated the 16th day of January 1951, this Company agreed that such additional salary payable to Mr. Gorman shall be computed before deduction of taxes; and

"WHEREAS, the Company has, for the current year, set up a reserve for payment of 1955 vacation pay to its employees and deducted such reserve from its operating profits for the current year in addition to making payment of the vacation pay to its employees due for the year 1954; and

"WHEREAS, this Company contemplates setting up 1605 a Southern plant and the expenditure of large sums of money in moving and setting up some of its equipment in such plant, part of such expenses to be charged to future operating profits;

"NOW, THEREFORE, BE IT RESOLVED that the additional salary pay Joseph J. Gorman under his contract with this Company dated the 15th day of November 1949, shall be computed on the operating profits before deduction and charges for depreciation, before deductions for any interest on notes payable to any members of the Govin family, before deduction of income taxes, before deduction for reserve set up in 1954 for the payment of employees' vacation pay for the year 1955, and hereafter before deductions for charges against operating profits incurred by the reason of the moving or setting up any of the Company's equipment in its contemplated Southern plant.

"There being no further business, the meeting was adjourned."

Mr. BERNSTEIN: P-55, P-56, P-57 are offered. P-55 is a letter dated September 22, 1954, from the Coosa River Newsprint Company to J. J. Gorman, President, International

1606 Color Printing Company. Exhibit P-56 is a contract, a form contract, between Hearst Enterprises, Inc., and Coosa River Newsprint Company, offered as a business record. P-57 is a letter dated November 19, 1954, from the Coosa River Newsprint Company to Mr. R. O. Sternberger of Hearst Enterprises, Inc. P-56, the contract, is offered as a business record. P-57 and P-55 are merely offered for the purpose of explaining that Sylacauga, Alabama, as referred to in the contract when the contract refers to at or nearby Coosa Pines, Alabama. P-55 is offered in explanation of the contract between the parties to the contract.

Mr. RAICHLER: May we record our objections?

The COURT: Yes.

Mr. RAICHLER: I object to those, if Your Honor please, on the grounds they are hearsay, unconnected, no basis has been laid for their receipt, and incorporate all I have argued 1607 before against similar documents.

Mr. STEVENS: I take the same position on behalf of NEA; certainly there is no connection between a Coosa River contract and Hearst Enterprises and NEA.

The COURT: Now, you said the objections heretofore made, or words to that effect; these are not coming in as declarations of any alleged joint co-conspirator, Mr. Raichle. As I understand it, they are coming in here to show that according to the Government, that after the conspiracy came into full being, the fact that certain things happened in the marketplace which they claim resulted from the conspiracy, is that correct?

Mr. STEVENS: Excuse me, Your Honor—

The COURT: I would like to hear from Mr. Bernstein.

Mr. BERNSTEIN: That is not correct, Your Honor. These particular documents provide the evidence that I relied on in answering Your Honor's question this morning as to what 1608 the conditions, what the market conditions were, was there any other opportunity to get rid of this plant, was it a dead horse, and so forth. These are the business transactions that will provide the evidence to support the contention. And the three documents here—the one document that the Government is relying on is P-56, the contract. This is being offered as a business record. It is the Government's contention that where there is a contract in existence between the parties, the best evidence of that is the contract itself. There

no other way to evidence it, and the relevancy of the contract
 will be shown when all of the evidence in the case is relied on.
 business record may be offered as against the whole world,
 particularly a contract, if it is otherwise relevant it is certainly
 competent. It is only a question of relevancy. The other
 two documents are between the parties to the contract
 and go to explain certain terms in the contract which
 are not evident from a reading of them.

The COURT: Relevancy isn't apparent to me right now. I am
 going to reserve decision on its receipt, and again you may brief
 it for me, giving the opportunity to your opponents to reply.
 have to read these things, gentlemen. I have not done it and
 do not want to take time to read it now. I want to get them
 before me. I will have to sweat them out on my own.

Government's Exhibit P-55 for Identification

"SEPTEMBER 22, 1954.

"Air Mail, Special Delivery

Mr. J. J. GORMAN,
 President, International Color Printing Company,
 8 George Avenue, Wilkes-Barre, Pennsylvania.

"DEAR JOE: As requested in our telephone conversation this
 morning, I confirm my August 30 discussion with you
 and Mr. Nicht in New York as follows:

"In the event you should decide to build a comic print-
 ing plant in the Southeast, we would undertake to supply you
 with the newsprint requirements for such plant commencing
 in 1956, up to a maximum annual tonnage to be determined,
 with the understanding that your newsprint requirements of
 that plant would be purchased from us exclusively up to the
 maximum amount of tonnage we agreed to supply. Our paper
 would be supplied at our regular contract price and terms, the
 arrangement to be covered by a long-term contract either with
 Hearst Enterprises, Inc., or if with International Color Print-
 ing Company, to be guaranteed either by Hearst Enterprises,
 Inc., or King Features.

"We would enter into this agreement with the understanding
 that you would be permitted to truck the newsprint from our
 plant should you so elect, in which case we would allow the

published carload freight rate or trucking rate to destination, whichever was lower.

"From our various conversations and from the data you have given us, we understand that your initial requirements would be in the neighborhood of 8,000 to 10,000 tons annually.

1611 "This offer is subject to your proposed printing plant being located in or near Childersburg or Birmingham, Alabama.

"We will hold this offer open for a reasonable length of time but would like fairly prompt acceptance or rejection so as to enable us to make other plans for disposal of the tonnage in the event you should decide not to go ahead.

"I understand you are planning to be down this way for further discussions some time next week. We will endeavor to be whatever help we can in connection with your studies.

"Yours very truly,

**"COOSA RIVER NEWSPRINT COMPANY,
Vice-President."**

Government's Exhibit P-56 for Identification

"In consideration of the mutual covenants and agreements hereinafter set forth,

"COOSA RIVER NEWSPRINT COMPANY

"an Alabama corporation (hereinafter called the Seller), hereby agrees to sell and Hearst Enterprises, Inc., a New York corporation (hereinafter called the Purchaser), hereby agrees to purchase from the Seller of the output of its mill, white standard newsprint paper for use exclusively by International Color Printing Company in its printing plant to be erected at or nearby Coosa Pines, Alabama (hereinafter called the destination), as follows:

1. QUANTITY.

"The quantity covered by this contract shall be: for 1956, 2,500 tons; for 1957, 8,000 tons, and for the remaining term of the contract, 10,000 tons annually.

"Should International Color Printing Company's requirements exceed the above quantities in any of the years designated, Seller shall have an option to furnish all or any part of the additional white standard newsprint paper needed, such option to be exercised within 30 days after receipt of notice.

Purchaser shall notify seller of the additional quantity of newsprint which will be required by International Color Printing Company at any time. The first such notification shall be made by October 1, 1955.

"The newsprint referred to herein shall be ordered, shipped, and delivered in carload lots in approximately equal monthly installments, noncumulative, during the term of this
1613 agreement.

"2. TERM.

"The initial term of this contract shall be the period beginning January 1, 1956, and ending December 31, 1965. If on or before September 1, 1964, the Seller shall give the Purchaser written notice of Seller's desire to extend the contract for a further term of ten years, then, unless purchaser on or before October 1, 1964, shall notify Seller of his refusal to extend the term, the contract shall be extended for an additional period beginning January 1, 1966, and ending December 31, 1975.

"3. SPECIFICATIONS.

"(a) Basic weight of the paper shall be approximately 32 pounds to 500 sheets, 24 by 36 inches, without reference to International Color Printing Company's production basis. On any individual shipment, five per cent (5%) over or under such basic weight shall constitute good delivery.

"(b) Unless changed by mutual agreement, roll sizes shall be: width, . . . 58 . . . and . . . 29 . . . inches; diameter, . . . 40 . . . inches maximum.

"(c) Purchaser, or International Color Printing Company, shall furnish Seller by the 15th of each month specifications stating the tons of each width and diameter to be supplied during the succeeding month. If Purchaser, or
1614 International Color Printing Company, shall fail to furnish specifications by such date, Seller may manufacture and ship in accordance with specifications last received.

"4. PRICE AND BILLING.

"(a) The Seller's contract market price for standard newsprint paper in effect from time to time shall be the price applicable to all shipments of paper hereunder, but such price at no time shall be more than \$4 per ton in excess of the generally accepted contract market price then in effect for standard newsprint paper manufactured in North America delivered in New York City.

"(b) Such price shall apply per ton of 2,000 pounds f.o.b. Seller's mill and shall be subject to an allowance in lieu of freight equal to the full carload rate or trucking rate, whichever is lower, in effect at the time of shipment for standard newsprint paper shipped from Coosa Pines, Alabama, to destination, but such allowance shall not exceed the carload rate of freight or trucking rate, whichever is lower, in effect at the beginning of the contract term between such points.

"(c) The paper shall be invoiced at the actual weight of rolls when packed for shipment, including wrappers but 1615 excluding cores.

"(d) Cores will be invoiced at 2¢ per inch, and such charge will be credited to Purchaser upon return of cores to Seller's mill in good condition, freight prepaid.

"(e) Any and all taxes, duties, or other charges of any nature imposed by any United States, state or other government authority, which shall become payable by reason of the sale or delivery of merchandise hereunder, shall be deemed for the Purchaser's account, and the Seller may either invoice the same to the Purchaser separately or add the same to the price of merchandise shipped hereunder.

"5. DELIVERY:

"(a) All deliveries under this contract (except in case of billing to Seller's order) shall be made f.o.b. cars at Seller's mill, and title shall pass to Purchaser at time of such delivery.

"(b) Shipments shall be routed by the Seller, at the risk of the Purchaser, but with due regard for Purchaser's preference where practicable.

"6. TERMS OF PAYMENT:

"Payment shall be due net cash on or before the fifteenth day of the month following shipment, in United States funds at Seller's office. Any amount unpaid on the due date shall 1616 bear interest at six percent (6%) per annum, computed from the due date until paid.

"7. CLAIMS.

"(a) No allowance shall be made by the Seller for waste or damage or for paper left on cores.

"(b) The Seller shall not be liable for a claim of any nature unless written notice of such claim is given Seller within ten days after receipt of shipment. The Seller shall not be liable for indirect or consequential damage.

"8. CONTINGENCIES.

"It is agreed that if the Seller's production and/or deliveries of standard newsprint paper be hereafter prevented, impaired, reduced, or restricted by reason of force majeure, strikes, floods, fires, accidents, transportation contingencies, embargoes, or shortages of water, power, labor, necessary materials or supplies, war, acts of God or the public enemy, riot or civil commotion, voluntary or involuntary compliance with any law, prohibition, restraint, order, direction, request, rule or regulation promulgated by any government, Federal or State, or any subdivision or agency thereof, or any other cause beyond its control (whether or not of the same character as the foregoing), then during such period the Seller without liability may reduce the quantities herein specified in proportion to the reduction or restrictions upon the Seller's production and/or deliveries, and the Seller shall be required only to apportion the paper which it has available for shipment during such period of reduced production, on a pro rata basis among all customers with whom it then has contracts; and if for any such cause, including the failure of International Color Printing Company to erect a printing plant at or nearby Coosa Pines, Alabama, the International Color Printing Company's ability to accept and/or utilize paper is hereafter impaired, reduced, or restricted, the Purchaser's obligation to accept paper shall be reduced during the period of such disability by such quantity as the International Color Printing Company shall be unable to accept and/or utilize. In any such case the tonnage which the Seller is unable to deliver or the International Color Printing Company to receive and/or utilize shall be eliminated from this agreement and the parties hereto shall be relieved of all liability with respect thereto.

"9. DEFAULT.

"Upon failure of Purchaser to pay any amount when due or to fulfill any other provision hereof, the Seller, 1618 without demand for payments past due, may at its option:

"(a) Make deliveries subject to payment of sight draft attached to bill of lading without waiving or impairing Seller's right to adopt subsequently the course provided for in clause (b); or

"(b) refuse to furnish any more paper and declare the Purchaser in default and all of the obligations of the Purchaser

hereunder due forthwith, notwithstanding the terms of the agreement, and the Purchaser shall be and remain liable to the Seller for all loss and damage sustained by reason of such failure to pay and/or default.

"Because of the difficulty in ascertaining the loss or damage which the Seller may sustain by reason of any such failure or default by the Purchaser, the sum of \$10 per ton for all paper covered by this contract and undelivered is agreed upon and fixed as liquidated damages, which the Purchaser agrees to pay to the Seller forthwith in addition to all amounts, including interest, for paper and cores delivered and not paid for or returned.

"10. ASSIGNABILITY OF CONTRACT.

"This contract shall not be assigned without the prior written consent of the Seller, but such consent shall not be arbitrarily withheld. The prohibition against assignment shall not apply in the case of any bona fide merger or re-organization in which the purchaser participates.

"11. ARBITRATION.

"It is hereby agreed that if at any time any dispute, differences, or question shall arise between the parties hereto or their respective successors or assigns, or any of them, relative to the construction, meaning, or effect of this agreement or any provision hereof or the rights or liabilities of the parties hereto respectively or of their successors or assigns under this agreement in relation to the premises, then every such dispute, difference, or question shall be settled by arbitration in accordance with the rules and procedures, then obtaining, of the American Arbitration Association (with such modification as may be required to comply with the law of Alabama), and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

"12. NOTICES.

"Notices hereunder shall be in writing and may be given by either party to the other by registered mail addressed 1620 as specified below, or to such other address as may be substituted by written notice from either party to the other.

Coosa River Newsprint Company (Seller), Coosa Pines (City), Alabama (State).

Hearst Enterprises, Inc. (Purchaser), New York (City), New York (State).

"A notice so given by registered mail shall be deemed to have been received by the party to whom addressed on the third day following the date of mailing.

"13. AMENDMENT."

"This contract constitutes the entire agreement between the parties hereto and shall not be altered by either party except by consent of both parties in writing executed by their respective representatives duly authorized.

"14. EXECUTION."

"This contract shall be executed at Seller's office in three original counterparts and shall be interpreted, construed, and enforced according to the laws of the State of Alabama.

"This agreement shall not be binding until executed by both parties by their respective representatives and upon such execution shall be binding upon and issue to the benefit of the parties hereto, and if assigned in accordance with provision of paragraph 10, upon their respective successors and assigns.

"IN WITNESS WHEREOF, Each of the parties has caused this contract to be executed in its behalf by its appropriate representative duly authorized for this purpose, this 8th day of December, 1954. Hearst Enterprises, Inc., Purchaser, by R. O. Sternberger, President; Coosa River Newsprint Company, Seller, by R. M. Watt, Vice-President."

Government's Exhibit P-57 for Identification

"NOVEMBER 19, 1954.

"Mr. R. O. Sternberger, President, Hearst Enterprises, Inc., Room 309-959 Eighth Avenue, New York, New York.

"Dear Bob:

"In accordance with our telephone conversations today, we submit herewith quintuplicate copies of a contract to cover estimated newsprint requirements of a comic printing plant to be erected by International Color Printing Company at or near Coosa Pines, Alabama. After executing, kindly return all copies for our completing signatures, following which one copy (or two if desired) will be returned for your con-
tract files.

"Submission of this contract is predicated upon the assumption that said printing plant will be located at Coosa Pines, Childersburg, Sylacauga, Talladega, Anniston or Birmingham, Alabama, or some intermediate point.

"It is understood that the quantities stated are honest estimates of the probable requirements and that we will supply you and you will purchase from us such requirements up to the amounts specified. Excess requirements are first to be offered us, as provided in the contract.

"Notwithstanding the terms of the contract, it is understood we will be agreeable to an arrangement permitting trucking of the tonnage from our mill to International Color Printing Company's printing plant by their own trucks. In that event, title will pass f.o.b. trucks at our mill loading platform, instead of f.o.b. cars, as provided in the contract and the allowance in lieu of freight will be the current published trucking rate to destination above-mentioned, of 15¢ per 100 pounds.

"Yours sincerely,

COOSA RIVER NEWSPRINT COMPANY,

Ralph/8, Vice-President."

1623 Mr. BERNSTEIN: P-58, Your Honor, is a letter from Joseph J. Gorman, International Color Printing Company, to Frank J. Nicht, King Features Syndicate, dated December 30, 1954. P-58 for identification is offered in evidence—the letter refers to a contract enclosed which covers International printing for King Features, which should be for a period of ten years, talking about ten years in the future. The evidence shows that the contract was ultimately signed, was in effect, during a period of time when Greater Buffalo owned all of the stock in International and this is a background document with respect to that contract.

Mr. RAICHLE: Made a year before we—

The COURT: I'll receive that, overruled.

Mr. STEVENS: I would like to have an objection particularly for NEA on that.

The COURT: Overruled.

1624 (Thereupon, Government's Exhibit P-58, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-58 in Evidence

"DECEMBER 30, 1954.

"Mr. FRANK J. NICHT,

*King Features Syndicate, 235 East 45th Street, New York 17,
New York.*

"DEAR FRANK: I am enclosing the first form of a contract

to cover International Color Printing Company printings for King Features Syndicate which I think should be for a period of ten years. This form makes no reference whatever to the Southern Plant but I think you will be perfectly willing to agree that when a Southern Plant is established by us the following should hold true: Sternberger will sell paper to us under the same terms for which he buys from Coosa River and to help us make up the increased cost of running an additional plant, whatever saving will result from hauling paper in our own trucks will be ours. Also, to help in the establishment of plant and to offset overhead part of the transportation 1625 saving will accrue to International Color Printing Company. This particularly holds true to the amount which we are now absorbing due to a theoretical Richmond Plant. I fully realize that unless the cost is kept down to the lowest possible minimum competition will be extremely difficult but I also know, as do you, that we cannot borrow money nor pay for a plant without a satisfactory profit. Therefore, there should be a further adjustment in price to allow us to what we will both agree is a satisfactory amount of profit per week. Otherwise, we cannot proceed with the plant and even if we start to operate, we cannot continue. There will probably be some additional changes and additions to this proposal after we both have a chance to study it further, but I am giving it to you now so you will have a chance to look it over through the weekend and maybe I will be able to see you some time next week in New York.

"Best Regards,
"Sincerely yours,

JOSEPH J. GORMAN,
International Color Printing Company.

Mr. BERNSTEIN: P-59 is a letter dated February 13, 1956, J. W. Koessler, President, to Mr. Calvin Clyde, Jr., 1626 General Manager of the T. B. Butler Publishing Company, Tyler, Texas.

Mr. STEVENS: Objection for NEA. This is a correspondence between Koessler and a manager of some publishing company down there.

The COURT: Received.

(Thereupon, Government's Exhibit P-59, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-59 in Evidence

"FEBRUARY 13, 1956.

"Mr. CALVIN CLYDE, Jr.,
General Manager, The T. B. Butler Publishing Company,
Tyler, Texas.

"DEAR MR. CLYDE: Our building at Lufkin is going up and we expect to be operating in September of 1956.

"We have purchased International Color Printing Company and likely will move some of this business to Lufkin.

"We plan also to print for King Features on such contracts King holds in Texas but the details of this arrangement have not been worked out.

"My suggestion is that you go along with King Features for the present but limit your contract to the shortest possible period so that you will be free to change if circumstances arrange themselves that such a move is an advantageous one for you.

"Kindest personal regards,

J. W. KOESSLER, President."

Mr. BERNSTEIN: P-60, Your Honor, is a contract dated April 22, 1958, between King Features Syndicate Division of the Hearst Corporation and International Color Printing Company.

Mr. STEVENS: Objection on behalf of NEA.

Mr. RAICHLE: No objection.

The COURT: Overruled, received.

(Thereupon, Government's Exhibit P-60, previously marked for identification, was received and marked in evidence.

1628 *Government's Exhibit P-60 in Evidence*

"AGREEMENT Made this 22nd day of April, 1958, between KING FEATURES SYNDICATE, Division of the Hearst Corp., hereinafter called 'Syndicate,' and INTERNATIONAL COLOR PRINTING COMPANY, hereinafter called 'International.'

"WHEREAS Syndicate and International are the parties to an agreement made the 30th day of July, 1955, hereinafter called the 'Contract.'

"NOW, THEREFORE, the parties agree as follows:

"1. International agrees that printing done for Syndicate by Greater Buffalo Press, Inc., Buffalo, New York, shall be

counted toward the printing business which Syndicate is obligated to give to International under Article Second of the Contract.

"2. In the event International discontinues the operation of its plant at Peoria or any other plant, International will so adjust its prices that after the discontinuance of the operation of any such plant total orders for customers of the Syndicate which were being printed at any such plant before the discontinuance of the operation of such plant shall in the aggregate carry no higher net delivered costs, printing and transportation included, than at the time of such discontinuance of operation of such plant.

1629 "3. International Color Printing Company shall be privileged to place the printing orders so transferred from Peoria or any of its printing stations to a printing station of The Greater Buffalo Press, Inc., where, without penalty to the Syndicate, it may enjoy the lowest transportation rate to the printing order's destination.

"4. These provisions do not preclude an increase in transportation rates in the event of specific or general increases in common carrier rates.

"5. In the event International shall offer its printing plant at Wilkes-Barre, Pennsylvania, or any other of its printing plants for sale, International agrees that it will first make a written offer of sale thereof to Syndicate setting forth the price and terms at which it is willing to sell the same. Syndicate shall have 90 days within which to accept or reject the offer. If Syndicate fails to accept the offer International shall be free to sell to some other party the property so offered but only at the price and terms at which the same shall have been offered to Syndicate. If International desires to offer any or all of its printing plants for sale at a lower price or at better terms than the offer so made to Syndicate it will first 1630 make a written offer to Syndicate at the lower price or better terms or both and Syndicate shall have 90 days within which to accept or reject the offer. This procedure shall be repeated as often as International lowers its price or alters its terms from the original offer.

"IN WITNESS WHEREOF The Hearst Corporation, King Features Syndicate Division, has caused this agreement to be executed by Frank J. Nicht, its General Sales Manager, and International Color Printing Company by Joseph J. Gorman

its President. KING FEATURES SYNDICATE, Division of Hearst Corporation, By Frank J. Nicht, General Sales Manager. INTERNATIONAL COLOR PRINTING CO., By Joseph J. Gorman, President."

Mr. BERNSTEIN: We go to Topic 16, Your Honor. This relates to the share of the market. The Government offers P-63, P-61, P-62. P-63 is a letter from Joseph J. Gorman, dated November 26, 1956, to Mr. Walter Koessler, Greater Buffalo Press, and the letter explains the manner in which a survey of the readyprint market was conducted and the business practice of the way Mr. Gorman did it for International.

1631 P-61 is the readyprint survey explained in P-63. P-62 are computations that have been made from this survey that were introduced on the prior proceeding here. They are being offered for the figures.

Mr. STEVENS: May I ask if these aren't all exhibits which were identified in the examination of Mr. Gorman in connection with the motion for a preliminary injunction? That was true of P-63, it bears Exhibit 14 on it, and was not the readyprint survey also introduced at that time?

Mr. FELDMAN: Yes.

Mr. STEVENS: The only thing you are talking about is the computation.

Mr. FELDMAN: That is right.

Mr. STEVENS: Previously you have taken the position in matters to which we were not a party that they were not being offered against NEA. What is your position on these?

1632 Mr. BERNSTEIN: Well, the Government offers this as against NEA for the limited purpose of showing that the interstate commerce, with which NEA is charged with having conspired to restrain, was not in substantial, was not *diminimus*. Except for that, the document would not be offered as against NEA because it really relates to the share of the market obtained by Greater Buffalo as a result of the acquisition of International. It is done for that limited purpose, to avoid the calling of a witness with respect to the manner in which the survey was taken. Exhibit P-63 explains the manner in which it was taken, and the Government would have no objection if this be received in lieu of the testimony of the man who prepared the survey. If NEA wishes to cross-examine that witness with respect to the manner in which the survey was

1633 taken, and for its accuracy, the Government would not object.

Mr. STEVENS: You can't put us in that bucket. You are offering evidence; it is up to you to adduce evidence admissible against us. Mr. Feldman erroneously stated each document was not offered in connection with the testimony. This was, because it bears—

Mr. FELDMAN: Which of these documents—

Mr. STEVENS: Which of these documents, Mr. Feldman—would you state for the record which exhibits were offered at the prior proceedings?

Mr. FELDMAN: P-62 was used. P-63 may not have been used.

Mr. STEVENS: Look here, it has Exhibit 14 on it.

Mr. FELDMAN: That was used in connection with an affidavit, not used during the actual testimony.

Mr. BERNSTEIN: The answer is no, it—

Mr. STEVENS: The answer is it was used because it was stapled to an affidavit submitted to Your Honor. It was argued upon in the course of the proceedings.

1634 Mr. FELDMAN: Let me put it this way: During the actual testimony that took place at the proceedings, what happened is this, originally, the Government put in an affidavit to this Court. It made certain allegations, and this was contained in an affidavit by Raymond Carlson. Mr. Carlson in turn based his affidavit upon a survey conducted by Mr. Gorman, who was President of International. Mr. Gorman, during the years, made a readyprint survey, and attached to his affidavit was a letter which was from Mr. Gorman to Mr. Koesler dated on a particular date and referring to the survey in 1955 and how he compiled the survey, and general background. Now, when the proceeding took place, what happened was, an officer of Greater Buffalo took the stand and submitted a document which stated that based upon the Gorman survey, the Government's figures were not completely accurate and that

1635 was put in evidence. Now, for the purpose of this proceeding here, there is attached to a stipulation of the parties, dated September 24, 1965, a statement that the compilation of the actual volume of production attributed to printers of color comic supplements for the year 1955 is contained in document designated 257, that is P-62 by the plaintiff, and marked D-13 in the proceeding heretofore had in this case, as an accurate summary of the Joseph J. Gorman survey for that year.

Mr. STEVENS: That doesn't make it admissible against us.

Mr. FELDMAN: This is the background.

Mr. RAICHLÉ: Could I have this word, Your Honor? When we were in Your Honor's chambers some weeks or months ago, and the Government announced it was amending its complaint to withdraw the monopoly charge, Mr. Bernstein said the reason for doing so was to drain out of the case discussions as to what constituted the relevant market and to simplify the issues here so that we would not be concerned with the market. I don't quite understand now how he can get around to a posture where we are talking about surveys and percentages of the market. I thought all that had been taken out of the case. Am I not right about that?

1636 **Mr. BERNSTEIN:** You are not completely correct. You are right in part, not completely.

The COURT: What is the purpose?

Mr. BERNSTEIN: Part of what you say is correct; part of what you say is not correct.

The COURT: What is the purpose of this offer?

Mr. BERNSTEIN: The purpose of this offer is to show that by the acquisition of International, Greater Buffalo increased its share of the market, for that printing which was done by color comic printers, which had been done for newspapers that didn't do their own printing, from thirty some-odd percent to sixty-three odd percent.

1637 **The COURT:** What do you say they increased it by reason of?

Mr. BERNSTEIN: By reason of acquiring the stock of International, yes, Your Honor. Stated another way, the Government—

The COURT: Wait a minute. It isn't a matter, is it, how much more business there was had; it is a question of whether there was a substantial business had? I think they are going to argue that between 1954—maybe they are—and the date of this survey that the business of Greater Buffalo increased.

Mr. BERNSTEIN: No, that is not the point. The Government contends that International at the time the stock was acquired by Greater Buffalo did a certain amount of business, and that Greater Buffalo did a certain amount of business. Now, we have to establish what amount of that business was done. We are going to do that by other figures and the Court will have to

know how does that compare with the business done by other color printers. This is to show that before the acquisition, International had approximately thirty percent of all of the business done by other color comic printers; after Buffalo had approximately thirty some-odd percent of that business; and because Greater Buffalo acquired International, it then had sixty some-odd percent. That is all that I offered to show. The readyprint survey and the letter showing how the survey was made is merely background material Exhibit P-62, which summarizes the whole thing. That is the only document that the Government is going to rely on with respect to those figures.

Mr. RAICHE: We have a controversy as to what constitutes relevant market. I thought it had been drained out of the

Mr. BERNSTEIN: May I explain that, Your Honor, if Your Honor wishes an explanation of that?

The COURT: Yes. I don't know what to do with it because of this question I have of what I did think was beyond out of the case, the monopoly feature.

Mr. BERNSTEIN: The Government is not contending—the Government contends when it completes its case—and it promises to be done in a short while, before four o'clock, Your Honor—the Government contends—

The COURT: We are talking about conspiracy here. If you take it out, what difference does it make about these percentages?

Mr. BERNSTEIN: Not with respect to the conspiracy; it makes no difference, Your Honor. We are talking in this case about three charges. The Government contends that the conduct, which it has been alleging, constituted three offenses. One offense is a conspiracy to eliminate competition for printed supplements; that violated Section 1. The conspiracy that began solely between King and Greater Buffalo and then was joined by NEA. The Government charges that after NEA joined this conspiracy, the conduct—and after Greater Buffalo acquired International—that conduct then constituted as well a conspiracy to monopolize.

The COURT: I thought that was out?

Mr. BERNSTEIN: No, Your Honor, it was not out, it was never stated to be out. The Section—may I read it?

The COURT: All right. You are distinguishing here from the monopoly cause that you pleaded?

Mr. BERNSTEIN: That is right. The paragraph of the complaint reads as follows: "Paragraph 24: The defendants, Greater Buffalo, Hearst, NEA and co-conspirator Eastern, and others to the plaintiff unknown, had been engaged in an unlawful combination and conspiracy which began in or about January 1954, or prior thereto, and has continued up to and including the date of the filing of this complaint, to monopolize." That

is still in. This is what has been left out: "And the defendant Greater Buffalo, since about June 1955, has 1641 monopolized—" those words are taken out; the rest remain in. "The above-described trade and commerce in color comic supplements, in violation of Section 2 of the Sherman Act." In addition to that, on page 11 of the complaint, there is a violation of Section 7 of the Clayton Act charged. With respect to that charge, that charge says: "That the effect of the aforesaid acquisition by Greater Buffalo of the defendant International—" —I'm skipping some of the language—"has been and will continue to be a substantial lessening of competition or tendency to create a monopoly with respect to the aforesaid trade in commerce in the United States, in violation of Section 7 of the Clayton Act; in that competition between the defendants Greater Buffalo and International has been and 1642 will continue to be eliminated." This document is offered to support the Section 7 of the Clayton Act charged and is offered for that purpose solely as against the defendant Greater Buffalo. Now, with respect to the defendant NEA. NEA has been charged with participating in a conspiracy. The Government has to prove that interstate commerce was involved and also that the amount of the interstate commerce that was involved was not insubstantial, and for that limited purpose P-62, the compilation, is offered, with P-63 and P-61 as the background material for the charge.

Mr. STEVENS: If The Court please, I would like to point out the inconsistencies in the position the Government has taken. On our first day together, Tuesday the 12th, when it came time, under their Topic No. 3, to read portions of the testimony of

Mr. Hammond, the transcript of his testimony, I objected that NEA was not a party to the proceeding, it 1643 was merely a matter with Greater Buffalo, and we were advised that was offered only against Greater Buffalo. After the

morning recess we came to P-9, a letter dated September 14, from Mr. Gorman to Local 137. Again I objected because that came from testimony which was taken of Mr. Gorman, and I was advised that was offered only against Greater Buffalo. Directly after that, there was a considerable discussion about portions of the testimony of a man named Brader, and again, that was only against Greater Buffalo because we had not participated. Now, by some chance, two days later, because they want to attach significance to these and direct charges against NEA, somehow these become admissible. When he talks about

the percentage of the market, the sizable nature of it, I
1644 might refer to this exhibit which he is talking about,
P-62. There are three columns. One has "Per Affidavit," which I assume is the affidavit of Mr. Carlson. Another has "Revised by G.B.P." And the third: "Percentage of Total Market." In the first column, the affidavit column as to Buffalo Color Press, or NEA, it says 4.6%. Revised by Greater Buffalo, 3.8%. Percentage of total market 2.5%. I respectfully submit, on the contention they are making, there is no substantial show of commerce involved by NEA in this matter.

The COURT: Then you should consider this helpful.

Mr. STEVENS: We don't want to have it at all. We don't want their help, Your Honor.

The COURT: I am going to reserve decision on that offer.

Mr. BERNSTEIN: May the record show that the stipulation of September 24, 1965, paragraph nine, recites as follows: "The compilation of the actual volume of production attributed to printers of color comic supplements for the year 1955, as contained in document designated 1645 257—"now P-62—"by the plaintiff and marked 'D-13': in a proceeding heretofore had in this case is an accurate summary of the Joseph J. Gorman survey for that year."

Mr. STEVENS: We have no criticism of its accuracy.

The COURT: When you brief these things I want these reservations sharply pointed out as problems for me to pass upon, and then I want you to make the best you can of your side, and your opponents will have a chance to reply, and I will have to rule.

Government's Exhibit P-61 for Identification

(This document was not made available to the Reporter.)

GOVERNMENT'S EXHIBIT P-62 FOR IDENTIFICATION

"ANALYSIS OF SUNDAY COMIC SUPPLEMENT MARKET IN TERMS OF 4 PAGE UNITS. PAGE 4 OF AFFIDAVIT, BY RAYMOND M. CARLSON FOR YEAR 1938, REVISED BY G.B.P. TO PROPERLY APPLY THE SAME FIGURES.

| 1646 | "1 | | 2 | |
|-------------------------------|---------------|----------|---|---|
| | Per affidavit | | | |
| | No. 4's | % market | | |
| ALL SUPPLEMENTS----- | 132, 008, 003 | | | |
| Less: Private Plants----- | | | | |
| COLOR COMIC PRINTERS----- | 70, 799, 032 | 100.0% | | |
| GREATER BUFFALO PRESS----- | 28, 798, 324 | 40.6% | | |
| INTERNATIONAL (KING)----- | 27, 237, 658 | 38.4% | | |
| BUFFALO COLORPRESS (NEA)----- | 3, 289, 032 | 4.6% | | |
| EASTERN COLOR----- | 3, 681, 339 | 5.2% | | |
| ACME COLORPRINT----- | 5, 001, 850 | 7.1% | | |
| SOUTHERN COLORPRINT----- | 477, 714 | .7% | | |
| FORT WORTH----- | | | | |
| WORLD COLOR----- | | | | |
| HEARST----- | | | | " |

"(See following for columns 3, 4 and 5 of Government's Exhibit P-62)

| 1647 | "3 | | 4 | | 5 | |
|----------------------------------|----------------|--------|---|--|---|-------------------|
| | Revised by GBP | | | | | |
| | No. 4's | % mkt. | | | | % of total market |
| ALL SUPPLEMENTS----- | 130, 092, 885 | | | | | 100.0% |
| Less: Private plants----- | 44, 208, 581 | | | | | 34.0% |
| COLOR COMIC PRINTERS----- | 85, 884, 304 | 100.0% | | | | 66.0% |
| GREATER BUFFALO PRESS----- | 26, 843, 474 | 31.4% | | | | 20.8% |
| INTERNATIONAL (KING)----- | 27, 237, 658 | 31.7% | | | | 20.9% |
| BUFFALO COLORPRESS (NEA)----- | 3, 289, 032 | 3.8% | | | | 2.5% |
| EASTERN COLOR----- | 3, 681, 339 | 4.2% | | | | 2.8% |
| ACME COLORPRINT----- | 5, 001, 714 | 5.8% | | | | 3.8% |
| SOUTHERN COLORPRINT----- | 477, 714 | .6% | | | | .4% |
| FORT WORTH----- | 1, 599, 556 | 1.9% | | | | 1.2% |
| WORLD COLOR----- | 753, 559 | .9% | | | | .6% |
| HEARST----- | 17, 000, 258 | 19.7% | | | | 13.0% |

"COMMENT"

"Column #3 deletes 1,954,850 sections charged to GBP in column #1. These are Canadian newspapers. Column #3 shows Hearst plants as color comic printers for the reason that the Chicago American and Pittsburgh Sun-Telegraph, both non-Hearst newspapers, are printed in the Hearst Chicago Plant. These runs total 2,956,434 copies in 4's.

1648 "Further—Hearst plants having a surplus capacity of 12,500,000, thus are capable of handling this output for King, a Hearst Division. Column #5 is the correct analysis, because it is the total market, the future potential market, and the original source of the industry."

Government's Exhibit P-63 for Identification

"NOVEMBER 26, 1956.

"Mr. WALTER KOESSLER,
Greater Buffalo Press Inc.
302 Grote Street,
Buffalo, New York.

"DEAR WALTER: Each year, for the past ten or fifteen years, we have been preparing what we call a Readyprint Survey to determine what work is being done by each of our competing plants and also what work is still being done by "Own" plants. We get our information from various sources. First of all we write to every Sunday Newspaper in the United States, and all Saturday papers which we think might carry a supplement to obtain copies of their colored supplements. We also ask questions as to where their supplements are printed.

1649 "About sixty per cent of the newspapers answer immediately giving full information. About twenty per cent come around after we write the second time and a final few papers give us no information whatever. Therefore, the survey is not absolutely accurate but I think close enough to give us a fairly good picture of how things are going.

"I doubt that in '1955' our information was as complete as it might have been because the '1956' figures show that Greater Buffalo has an increase of about ten million fours. The additional work from Buffalo Color and World Color accounts for about four million of this. The other four million difference may be the result of the fact that we did not have all of your '1955' business listed. Acme show a gain of 1,000,000

not including Oakland and San Francisco, which I believe Acme is now doing. Therefore, Acme's business is around 8,000,000, as against 4,000,000 a few years ago. Buffalo Color is out of the picture entirely. In our Survey, Fort Worth printing shows up under 'Own Plant'. There has been

1650 little change at Eastern according to the survey figures.

We have gained about 1,000,000. World Color has dropped approximately 700,000 and Southern Color has picked up about 200,000. Wilmington has picked up 206,000. The 'Own Plant' total dropped from 63,000,000 to 61,000,000.

"The totals cannot be absolutely accurate for the reason that sometime newspapers run 12-pages, sometime 10-pages and sometime 16-pages. We use the section that is sent in to us at the time we make the request.

"Because our greatest opportunity for growth lies with the newspapers now listed under 'Own Plant,' I am going to attach a listing separate from what I have already put into the Readyprint Survey (for the purpose of convenience.)

"Will you please have someone check this book over carefully and let us know what may be found regarding Buffalo printing.

"Best regards, Sincerely yours,

"JOSEPH J. GORMAN.

"P.S. I have just noticed that we have Seattle Post Intelligencer listed under Acme—I do not think this is right
1651 and I am rechecking."

(ATTACHED TO P-63)

"SUPPLEMENTS PRINTED IN 'OWN PLANT':"

| | | |
|-------------|-----------------------------|-------------|
| ARKANSAS | Little Rock Democrat | 181, 200 |
| CALIFORNIA | Los Angeles Times | 2, 443, 500 |
| | Los Angeles Examiner (H) | 2, 294, 000 |
| | San Francisco Examiner (H) | 1, 750, 000 |
| | Santa Rosa Press Democrat | 59, 000 |
| COLORADO | Vallejo Times | 42, 600 |
| | Denver Post | 1, 043, 400 |
| | Rocky Mountain News | 960, 000 |
| | Grand Junction Sentinel | 15, 000 |
| | Pueblo Chieftain Star | 72, 800 |
| CONNECTICUT | Bridgeport Herald | 186, 400 |
| FLORIDA | Daytona Beach News Journal | 53, 800 |
| ILLINOIS | Jacksonville Times Union | 451, 500 |
| | Chicago Herald American | 2, 800, 000 |
| | Chicago Tribune | 4, 100, 000 |
| INDIANA | South Bend Tribune | 450, 400? |
| IOWA | Des Moines Register Tribune | 1, 048, 000 |
| KANSAS | Great Bend Tribune | 8, 900 |
| | Parsons Sun | 8, 900 |

| | | |
|----------------|---------------------------------|---------|
| KENTUCKY..... | NONE..... | |
| LOUISIANA..... | New Orleans Times Picayune..... | 836,700 |
| | New Orleans State..... | 182,600 |

1632 "SUPPLEMENTS PRINTED IN 'OWN PLANT:' (continued)

| | | |
|--------------------|------------------------------------|-----------|
| MARYLAND..... | Baltimore American (H)..... | 1,125,000 |
| MASSACHUSETTS..... | Boston Sun Advertiser (H)..... | 1,886,000 |
| | Springfield City Republican..... | 334,200 |
| | Detroit Times (H)..... | 1,826,650 |
| MICHIGAN..... | Minneapolis Star Tribune..... | 1,879,500 |
| MINNESOTA..... | Meridian Star..... | 20,400 |
| MISSISSIPPI..... | St. Louis Post Dispatch..... | 1,401,000 |
| MISSOURI..... | | (Roto) |
| MONTANA..... | Billings Gazette..... | 72,400 |
| NEBRASKA..... | Miles City Star..... | 33,800 |
| | Lincoln Journal Star..... | 153,000 |
| | Omaha Herald..... | 787,500 |
| NEW MEXICO..... | Santa Fe, New Mexican..... | 11,800 |
| NEW YORK..... | New York Journal American (H)..... | 3,700,000 |
| | New York Sunday News..... | 7,104,000 |
| | Albany Times Union (H)..... | 407,400 |
| OKLAHOMA..... | E. & I. D. News..... | 20,500 |
| | Muskogee Times Democrat..... | 30,800 |
| | Oklahoma City Oklahoman..... | 792,000 |
| OREGON..... | Eugene Register..... | 65,200 |
| | Portland Oregonian..... | 594,200 |
| | Portland Journal..... | 621,200 |

1633 "SUPPLEMENTS PRINTED IN 'OWN PLANT:' (continued)

| | | |
|-------------------|-------------------------------------|-----------|
| PENNSYLVANIA..... | Philadelphia Bulletin..... | 2,484,300 |
| | Philadelphia Enquirer..... | 4,497,600 |
| | Pittsburgh Press..... | 1,923,600 |
| | Pittsburgh Sun Telegraph (H)..... | 1,575,000 |
| TENNESSEE..... | Memphis Commercial Appeal..... | 768,000 |
| TEXAS..... | Beaumont Enterprise..... | 292,000 |
| | Galveston Daily News..... | 70,200 |
| UTAH..... | Laredo Times..... | 61,200 |
| WASHINGTON..... | San Antonio Light (H)..... | 507,500 |
| | Salt Lake City Tribune..... | 531,600 |
| | Bellingham Herald..... | 20,800 |
| | Seattle Times..... | 963,000 |
| | Spokane Spokesman..... | 432,900 |
| | Walla Walla Union Bulletin..... | 16,100 |
| WISCONSIN..... | Seattle Post Intelligencer (H)..... | 910,000 |
| | Milwaukee Journal..... | 1,431,900 |
| | Milwaukee Sentinel (H)..... | 791,700 |
| CANADA..... | Winnipeg Free Press..... | 459,600 |
| | Le Soleil..... | 333,000 |
| | Victoria Daily Columnist..... | 65,600 |
| | Vancouver..... | 569,700 |
| | Windsor Star..... | 109,650 |
| | Saskatoon Star..... | 73,800 |

1634 "SUPPLEMENTS PRINTED IN 'OWN PLANT:' (continued)

| | |
|-------------------------|----------|
| Regina Leader Post..... | 45,700 |
| Winnipeg Union..... | 143,200 |
| Edmundton Journal..... | 185,800" |

"(H)—REPRESENTS HEARST PLANT."

"11/1/56 PAPERS PRINTED BY INTERNATIONAL COLOR PRINTING**WILKES-BARRE**

Akron, Ohio, Beacon Journal
 Anderson, S.C. Independent
 Ashland, Ky., Independent
 Asheville, N.C., Citizen Times
 Athens, Ohio, Messenger
 Augusta, Ga., Chronicle
 Austin, Tex., Statesman
 Beckley, W. Va., Register
 Binghamton, N.Y., Press
 Birmingham, Ala., News
 Bluefield, W. Va., Telegraph
 Bradenton, Fla., Herald
 Bristol, Va., Herald Courier
 Canton, Ohio, Repository
 Charleston, W. Va., Gazette

1655 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
(Continued)

Charleston, W. Va., Mail
 Charleston, S.C., Evening Post
 Charleston, S.C., News & Courier
 Charlotte, N.C., Observer
 Chattanooga, Tenn., Times
 Clarksburg, W. Va., Exponent Telegram
 Clearwater, Fla., Sun
 Columbia, S.C., State
 Columbus, Ga., Ledger Enquirer
 Cumberland, Md., Times
 Danville, Va., Register
 Dayton, Ohio, News
 Decatur, Ala., Daily News
 Denton, Tex., Record Chronicle
 Durham, N.C., Herald
 Detroit, Mich., Polish Daily News
 Elizabeth City, N.C., Advance
 Elizabethton, Tenn., Star
 Fairmont, W. Va., Times
 Farmville, Va., Herald
 Gadsden, Ala., Times
 Garden City, N.Y., Newday
 Greenville, Tenn., Sun

1656 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
(Continued)

Greenville, S.C., News
 Harrisburg Patriot News
 Henderson, N.C., Dispatch
 Hereford, Tex., Brand
 Huntington, W. Va., Herald Adv.
 Huntsville, Ala., Times
 Ironton, Ohio, Tribune
 Jackson, Miss., State Times
 Jackson, Tenn., Sun
 Jamaica, N.Y., Press
 Kannapolis, N.C., Independent
 Kingsport, Tenn., Times
 Knoxville, Tenn., Journal

Lake Charles, La., Amer. Press
 Las Cruces, N.M., Sun News
 Lexington, Ky., Herald Leader
 Lima, Ohio, News
 Lynchburg, Va. News & Advance
 N.Y. Mirror
 Lynn, Mass., Telegram
 Macon, Ga., Telegraph
 Marion, Ind., Tribune
 Martinsville, Va. Bulletin

1657 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
 (Continued)

McKeesport, Pa., Daily Advance
 Miami, Fla., Herald
 Middletown, Ohio, News Journal
 Monroe, La., News Star World
 Montgomery, Ala., Advertiser
 Morehead City, N.C., News Times
 Middletown, N.Y., Record
 Newark, N.J., Ledger
 New Bedford, Mass., Std. Times
 Norfolk, Va., Pilot
 Orlando, Fla., Sentinel
 Pulaski, Va., S.W. Times
 Parkersburg, W. Va. News
 Portsmouth Times
 Philadelphia, Pa., Mayfair Times
 Pittsburgh, Pa., Sun-Telegraph
 Port Arthur, Tex., News
 Portland, Maine, Telegram
 Raleigh, N.C., News & Observer
 Raleigh, N.C., Times
 Reading, Penna., Eagle
 Richmond, Va., Times Dispatch
 Roanoke, Va., Times

1658 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
 (Continued)

Rome, Va., News Tribune
 Savannah, Va., News
 Scranton, Pa., Scrantonian
 Spartanburg, S.C., Herald
 St. Petersburg, Fla., Times
 Trenton, N.J., Times
 Tuscaloosa, Ala., News
 Waco, Texas, Tribune
 Washington, D.C., Post & T. Herald
 Terre Haute, Tribune
 Tampa Tribune
 Waycross, Ga., Journal
 Wenatchee, Wash., Daily World
 Wheeling, W. Va., News Register
 Wilkes Barre, Pa., Independent
 Wilmington, N.C., Star News
 Winston Salem, N.C., Journal

SPANISH

Mid-Ocean, Printed in English
 Havana, Marina
 Havana, El País
 Havana Excelsior
 Havana El Muncho

1659 "PAPERS PRINTED BY INTERNATIONAL—WILKES-BARRE
(Continued)

Havana Informacion
 Venezuela, El. National, Sun. Tribune
 Venezuela, La., Esfera
 San Juan, El. Mundo
 Panama City American (Printed in English)
 Tampico, Mexico
 Caracas, Venezuela, Printed in English"

Mr. BERNSTEIN: With respect to P-64 and P-65, Your Honor; P-64 is a letter from J. W. Koessler, President of Greater Buffalo Press, to Mr. E. R. McDowell, Publisher of the Lima News, Lima, Ohio, dated October 11, 1956; and P-65 is a memorandum from R. K. Rogers, who has been identified as having been a salesman with King Features Syndicate, addressed to Mr. Nicht, dated October 2, 1956. That is offered in connection with P-64, to show the action taken with respect to P-64.

Mr. STEVENS: NEA objects to each of these documents.

Mr. BERNSTEIN: It is offered against NEA, subject 1660 to the general connection rule; as against Greater

Buffalo, P-64 is offered and P-65 is offered as under the rule of explaining or relating to a document that is admitted in evidence.

Mr. RAICHLE: I don't object to 64, it is a letter from Mr. Koessler. I don't know about the handwriting.

Mr. BERNSTEIN: The stipulation was that the document was authentic, that would include the handwriting.

Mr. MOORE: No, read the stipulation, it came from our files.

Mr. BERNSTEIN: I would assume if the document came from your files it had the handwriting on it when it came from the files.

Mr. MOORE: That doesn't qualify the handwriting.

Mr. BERNSTEIN: It says—the Court can note the comments on the bottom of 64.

Mr. RAICHLE: That is innocuous anyway. I don't take serious objection to the letter. Let the whole business in.

The COURT: All right, received.

1661 Mr. RAICHLE: Excuse me, Your Honor, I do object to the other document, P-65. That is in the category of these other things.

The COURT: That is only offered as an explanation of the contents of the preceding exhibit?

Mr. BERNSTEIN: That is correct.

Mr. RAICHLE: But the preceding exhibit is a letter from Mr. Koessler to somebody. This is not an explanation by Mr. Koessler, it's a construction put on the letter by Mr. Rogers in a memo to this man, Nicht. It comes within the category of the documents Your Honor has reserved on.

Mr. BERNSTEIN: P-65 is not offered as a construction of the language, it is offered for the purpose of showing the action taken with respect to 64.

Mr. RAICHLE: It is hearsay, certainly unconnected with us. I urge Your Honor to reserve on that, we will cover that in a memorandum too.

1662 The COURT: Let's do that. We'll receive the first exhibit P-64, and reserve on P-65 in the interest of moving along. We will have to make a note of that.

Mr. STEVENS: Reserved in connection with us, Your Honor?

The COURT: Yes. I take it you consider NEA in the conspiracy full blown?

Mr. BERNSTEIN: Oh, yes, Your Honor.

The COURT: That is your position?

Mr. BERNSTEIN: Yes, Your Honor.

(Thereupon, Government's Exhibit P-64, previously marked for identification, was received and marked in evidence.)

Government's Exhibit P-64 in Evidence

"OCTOBER 11, 1956.

"MR. E. R. McDOWELL, Publisher

The Lima News, Lima, Ohio

"DEAR MR. McDOWELL: Our newsprint supply at this time does not permit our presenting a proposal on printing the comics for the Lima News.

1663 "Thank you for calling upon us and I trust we may have such an opportunity at some later date.

"Very truly yours,

"J. W. KOESSLER,
President."

Government's Exhibit P-65 for Identification:

"OCTOBER 2, 1956.

"From: R. K. Rogers

"To: Mr. FJ Nicht:

"From: R. K. Rogers

"DEAR MR. NICHT: We have a cancellation from the Lima,

O. News on their readyprint arrangement with us. I checked but find nothing to indicate either on our records or through the Greater Buffalo Printing schedules that the NEWS also receives an NEA section. Lima is owned by Mr. Hoiless and Clarence tells me other sections in the Greater Buffalo Press's plant. Whether these are NEA printings or direct arrangements with Greater Buffalo, we do not know.

"The important point at this juncture is to take some precautionary action with Mr. Koessler to avoid him giving a price to Lima which might result in our losing the business.

"Sincerely,

"R. K. ROGERS."

Mr. BERNSTEIN: I propose to move, as the last order
1664 of business, that all of the documents offered as against
NEA, subject to connection, now be received. I gather,
Your Honor, you would rather have that argued in connection
with the over-all argument.

The COURT: Have you finished with item 16?

Mr. BERNSTEIN: I'll be finished soon.

The COURT: Had you finished with item 16 or not?

Mr. BERNSTEIN: No—yes, Your Honor. Excuse me, excuse me. The Government offers P-69. P-69 is an affidavit by the resident controller of King Features Syndicate of the Hearst Corporation, and it purports to show figures from the books. The Government offers it subject to correction or verification and in the event that the defendants have any objection to the receipt of these figures in this form, the Government reserves the right to call the witness and subpoena the books and establish the figures in that fashion, rather than by the
1665 affidavit fashion.

Mr. STEVENS: I thought you told me at the recess
you were not offering this document against NEA.

Mr. BERNSTEIN: The Government will not offer this affidavit, P-69, against NEA.

Mr. MOORE: If the Court please, we certainly do object to the proof in this form. Let me state; we are not being captious about it; I was asked some two or three weeks ago if, on this question of the Hearst business, the amount of business Hearst did, so that we could expedite the trial, if I would make a study of the answers Hearst made to certain interrogatories submitted by the Government, while Hearst was still in the case. I said I would. We undertook to do that at considerable trouble, some-

thing we could check from our own records. We are perfectly willing, we have done that and satisfied ourselves as to 1666 it, and we are perfectly willing to state that the answers that Hearst has given the Government to these interrogatories were the things we were asked to stipulate, we will. But now I am presented with an affidavit as to what Hearst's business was during the years 1953, 1954 and 1955, and an affidavit, which just states that these records establish that this income represented payments for printed supplements exclusive of any charge for the publication rights of the features and/or comics contained in the printed supplements. I have no way of checking this from my records and on the Government's own theory on the case I don't see how Hearst can. They claim in their complaint that Hearst tied the price of the comics to the printing. I think this is proof that is insusceptible of ever being made. I will stipulate to what I was asked to stipulate to, not to this affidavit.

1667 Mr. RAICHLE: Put the answers to the interrogatories in evidence.

Mr. MOORE: Isn't that what you asked me to do?

Mr. FELDMAN: No. The interrogatories doesn't in any way refer to that.

The COURT: Why do you have an objection to the affidavit?

Mr. BERNSTEIN: There is no question about it. The Government requests leave, at a later date, to offer the evidence on P-69 in proper form and then we will offer that in evidence. The defendants, for its part, can be alerted that these are the facts that the Government contends and it will offer the proof in competent fashion.

Mr. RAICHLE: We are alerted.

Mr. BERNSTEIN: I will withdraw the offer of P-69.

The COURT: I don't know where that leaves our time schedule. That sounds like a complicated piece of proof to me, live proof. Maybe you can talk about it among yourselves.

1668 Mr. BERNSTEIN: I would think we might be able to find some way to do that. We will try anyway.

Mr. RAICHLE: We are in the spirit of negotiation. Does that do it?

Mr. BERNSTEIN: Almost through. We are on another topic; we are on Topic 18—I skipped 17—we are on Topic 18, Your Honor, the contention that competition with Eastern had been eliminated and the Government offers in evidence P-67 and

P-68. I believe they fall into the same category of the business records rules that you have rejected. They will be offered as declarations of co-conspirators.

The COURT: All right.

Mr. RAICHLE: Same objection.

The COURT: Same ruling.

Mr. BERNSTEIN: I take it Your Honor's ruling is that you will take them under advisement?

The COURT: That is correct.

Government's Exhibit P-67 for Identification

"AUGUST 4, 1955.

"MEMORANDUM

1669 "MESSRS. KOESSLER and LALORE and I had a luncheon session yesterday and we discussed many things.

"Mr. Koessler knows that we are trying to complete our contract with International Color Printing Company. He doesn't appear to be at all concerned about this. He also told me that he would prefer if we would continue to deal with ICP, that is, Mr. Gorman, just as we have heretofore. Seems to place great confidence in Joe.

"I brought up the newsprint situation. Apparently he's fixed all right now and he doesn't seem to be concerned about any real shortage. He seemed to think the present tightness is only temporary.

"When we get underway at Coosa River, Koessler will undoubtedly want to transfer Atlanta, Nashville and Mobile to that plant. That would undoubtedly require more paper because they're good sized runs.

1670 "Mr. Koessler told me that he expected to get Coosa River and Lufkin in operation in about a year. He seemed to think the plans Joe had in mind for a building provided for a setup that wasn't big enough. Unless I am mistaken, Koessler figures on spending about \$500,000 on a building at Coosa River.

"I told him about my recent visit with Bill Pape and Ham Moore.

"He confirmed my belief that we were to get 50c per thousand on the supplements he is presently printing in Texas, when these runs are transferred to Lufkin. We talked about the

transfer of the Dallas Times Herald and Houston Post runs to Lufkin and he brought up the Fort Worth Star-Telegram matter. This is something we should keep after.

"We also discussed Comic Weekly Printing and I asked him to give me a real proposition. From that point I will see what progress I can make.

"Altogether, our visit was mighty pleasant and helpful all around, I believe.

"FJN:Mec"

Government's Exhibit P-68 for Identification

"AUGUST 17, 1955.

"MEMORANDUM

"I spent a few hours with Ham Moore of Eastern
1671 Color Printing Company yesterday at luncheon (later on Mr. Thompson of the Mirror joined us).

"I think our talk has propelled us somewhat in the direction of an arrangement of mutual advantage.

"Ham is to give me prices on Portland, Maine and New Bedford Printing. I will take up the Boston Post Printing matter with Greater Buffalo.

"Ham seemed to like the idea of our giving them Portland and New Bedford, they to turn over Greensboro, N.C. to us. I just have a hunch that we are not likely to have much trouble so far as Eastern's going after our business is concerned and this could work in reverse, too so far as they are concerned.

"I pointed out that this would leave Eastern free to increase their readyprint rates which Ham admits need plenty of increasing.

"I have a hunch too that Eastern is very likely to extend little cooperation to NEA.

"I also insinuated to him the possibility of some kind
1672 of a connection with us and it might be one that could be worked out on the basis of his continuing to represent Eastern at the same time.

"FJN:mec."

Mr. BERNSTEIN: I offer P-66, another one of the memoranda from F. J. Nicht to Ward Greene, dated November 4, 1955, and

offered under the co-conspirator rule, and I take it Your Honor will take that under advisement?

The COURT: Yes, same ruling.

Mr. RAICHLE: Same objection.

Mr. STEVENS: Same objection.

Government's Exhibit P-66 for Identification

"NOVEMBER 4, 1955.

"TO: WARDE GREENE
"FROM: F. J. NICHT

"DEAR MR. GREENE: For some time past I have had conversations with Eastern Color Printing Company at Waterbury and at New York, the object being to see if an arrangement couldn't be worked out where rate cutting or price cutting would be eliminated and also to stop raiding one another. As a result of my last conversation with these people, which 1673 was yesterday, I think we have been able to conclude matters very satisfactorily.

"From now on we have every reason to believe that Eastern will not take our plants, and we won't take theirs. We, of course, are the larger target. As a result, Eastern now has a green light to raise their printing prices and quite substantially which is a very constructive move. We can do the same thing in certain spots because as a result of our recent deal with Greater Buffalo Press and this one with Eastern, we will have little competition to fear until we reach the territory of World Color Printing Company at St. Louis.

"Sincerely yours,

"F. J. NICHT."

Mr. BERNSTEIN: The Government offers in evidence from the deposition of Frank Nicht, page 145 through 149, except for the colloquy of counsel.

The COURT: What was 5-B, one of the letters or memos of Mr. Nicht's?

Mr. BERNSTEIN: Yes, Your Honor, 5-B.

The COURT: 5-B and C the same thing; right?

Mr. BERNSTEIN: Yes, Your Honor.

1674 The COURT: These refer to certain exhibits that were in before the parties on deposition, they are the same inter-office memoranda?

Mr. BERNSTEIN: Yes, Your Honor.

Mr. RAICHLE: I would object to them and move to strike it out, if I am not getting ahead of Your Honor. Page 148: "Q. Do you recall whether you had any discussions with him about the understanding subsequently got from Mr. Moore? "A. It's very likely." From a live witness you wouldn't take that.

Mr. BERNSTEIN: It goes to the weight, not to the competence.

Mr. RAICHLE: No, it doesn't at all. It is not admissible.

The COURT: Do you object?

Mr. RAICHLE: Yes.

The COURT: Sustained. Now, Mr. Noel, page 148 of this Nicht testimony, at folio 20: "Do you recall—" and there was an answer, and there is an objection to that question 1675 and answer, and I sustain the objection and make that ruling. Anything else contained in 145 to 149?

Mr. RAICHLE: No.

"Q. Do you recall also testifying that the prices reached, whether they be as to features or whether they be as to the color comic supplement printing, are usually arrived at after negotiations with the salesmen and the particular newspaper publisher involved?

"A. I got off there.

"Q. All right. The prices reached as to the sale of either features or color comic supplements are arrived at as the result of negotiations?

"A. That's right.

"Q. These negotiations are usually between your salesman or King Features Syndicate and the particular publisher involved?

"A. That's right, sir.

"Q. In the past, have publishers gotten even better prices for features if purchased along with color comic supplements, and vice versa, gotten better prices for color comic supplements if they purchased features simultaneously?

1676 "A. Yes, sir.

"Q. Mr. Nicht, you testified about the arrangements you had with Koessler of Greater Buffalo and also Mr. Moore of Eastern. Did any other person or persons at King Features Syndicate know about such arrangements other than yourself?

"A. My superiors.

"Q. Who were your superiors at that time?

"A. The general manager of the Syndicate—Mr. Greene at one time, currently Mr. McLearn and Mr. Gortatowsky.

"Q. In regard to your arrangement with Eastern, did you at any time ever impart such knowledge to Mr. Koessler?

"A. I don't recall that without being helped.

"Q. Do you recall ever discussing with Mr. Koessler Eastern?

"A. That could have been discussed.

"Q. You don't presently know?

"A. I don't recollect, no, sir.

1677 "Q. Before the recess, Mr. Nicht, I asked you whether you informed Mr. Koessler of your arrangement with Eastern. I show you now Plaintiff's Exhibit 5-B and ask you to refer to the place which has a clip (indicating), and I also show you Plaintiff's Exhibit 5-D and 5-C, and ask you to read those to yourself and then tell me if that refreshes your memory as to whether or not you imparted to Mr. Koessler information about your arrangement with Eastern?

"A. Yes, sir, this refreshes my memory.

"Q. It does?

"A. Yes, sir.

"Q. I ask you again, sir, do you recall now whether or not you imparted information about your arrangement with Mr. Moore of Eastern to Mr. Koessler?

"A. Yes, sir.

"Q. When did you impart such information to him, can you recall?

"A. I'd have to look at that again.

"Q. All right.

"A. In the last part of 1955.

"Q. Prior to making your arrangement with Mr. Moore of Eastern, did you discuss Eastern and the possibility of making such an arrangement with Mr. Koessler?

"The WITNESS: Will you repeat that, please?

"(The question was read.)

1678 "Q. Before you saw Mr. Moore or Eastern or anyone else of Eastern, did you discuss with Mr. Koessler you were going to see representatives of Eastern?

"A. I am not certain about that, but I would doubt it. It could have happened.

"Q. I show you Plaintiff's Exhibit 5-B and ask you now whether this refreshes your recollection?

"A. It does in a way. That is not clear to me now, any longer.

"Q. In other words, it does not refresh your memory?

"A. No. I don't know what that means.

"Q. Would you direct your attention, then, to the first paragraph on there also?

"A. This refers exclusively to Greater Buffalo Press.

"Q. I know that, sir.

"A. That doesn't help me much.

"Q. Do you recall now whether you had any discussions with Mr. Koessler about Eastern?

"A. I think so, yes."

Mr. BERNSTEIN: The Government offers Exhibit P-9, which previously had been offered and rejected, as against the defendant International only, as an admission by the defendant International.

Mr. RAICHLE: Well —

The COURT: This is the Printing Union?

Mr. RAICHLE: I object to that.

Mr. STEVENS: Objection for NEA.

Mr. BERNSTEIN: It is offered against International only as an admission by International.

Mr. RAICHLE: If the Court please, in all of these conspiracy cases an admission by a conspirator is excluded if it is the character of an admission that reflects upon other conspirators, even if it is offered only against one. In this case, International isn't charged with any wrongdoing. What possible thing can it be to—it is a pretext—I don't mean anything invidious—it is a pretext to get something in that is otherwise not admissible.

Mr. BERNSTEIN: This is relevant to the Section 7 charge.

The COURT: I don't know how many pages there are I am going to reserve decision on that offer and listen to your arguments.

Government's Exhibit P-9 for Identification

"SEPTEMBER 14, 1954.

"LOCAL #137,

Printing Pressmen and Assistants Union

Attention: Scale Committee.

"GENTLEMEN: When you met with me last week we discussed many of our problems at great length, but there were four questions which you asked that I answer more fully and in writing. These four questions were:

"1. If competition has been as unfair as claimed by me, why have not our competitors taken work from us?

"2. If competition has been so strenuous as to be almost impossible to meet, why have we found it necessary to add new presses?

"3. Is production per hour now running better than ever in our history, and was August the best month we ever had from a production standpoint?

1681 "4. How do our rates and manning compare with corresponding rates and manning in competing plants?"

"I believe there were other questions which I will think of as I go along and answer as truthfully as I can.

"Let us take the first question: IF COMPETITION HAS BEEN AS UNFAIR AS CLAIMED BY ME, WHY HAVE NOT OUR COMPETITORS TAKEN WORK FROM US? I am attaching a table listing the work which we formerly printed, since 1941, which we have lost to competitors and to newspapers doing their own work. I summarize as follows:

"To Buffalo Color Press 27,200; to Southern Color 457,150; to Acme 214,100; to Eastern Color 488,000; to Greater Buffalo 3,638,900; to Fort Worth 612,000, to Wilmington Star 48,000; to World Color 269,250; total 8,682,600.

"This does not take into consideration the runs lost before 1941 such as Montreal Standard, Louisville Courier Journal, Buffalo Courier Express and a number of others. Nor does it take into consideration the booklets which we have lost to other competing plants, the total of which would be some 1682 where in the neighborhood of 1,000,000 four page sections. Summing up. Since 1941 we have lost to competing plants close to 10,000,000 four page sections.

"What about new business gained by our principal competitors during that period, other than the business taken from us? As of April 25, 1951, Greater Buffalo Press was printing 24,000,000 four page sections weekly. Today the Greater Buffalo total is well over 35,000,000, exclusive of booklets.

"Since Greater Buffalo took a total of approximately 3,700,000 from us, where did the balance of approximately 7,000,000 come from?

"During the period from 1941 to 1946, while Dunkirk was running open shop, and since 1946, while Dunkirk was paying a rate much lower than we, it was a fairly simple matter for our competitor to outbid us on all new business and generally he went after the large runs, leaving us to pick up the smaller runs, with heavy plate changes.

"Since it is true that our competitor had considerably lower rates and more favorable manning during the period from 1941 to 1953 why didn't we lose more business to him?

1683 "There are several reasons why. Paper was scarce and he took new business rather than supplements for which he would have to compete. Now that most of the possibilities in new business have been used up he is going after the work now in plants such as ours which have higher rates, higher manning and more unfavorable conditions.

"**2. IF COMPETITION HAS BEEN SO STRENUOUS AS TO BE ALMOST IMPOSSIBLE TO MEET, WHY HAVE WE FOUND IT NECESSARY TO ADD NEW PRESSES DURING THE PAST SEVERAL YEARS?**

"There are several answers to this question:

"(A) We put one press in to replace 1247 which had become obsolete

"(B) Net production per hour is considerably lower than several years ago and therefore we need more presses to do the same amount of work.

"In the first eight months of 1951 we printed in Wilkes-Barre at the rate of 16,528 per hour. For the first eight months of 1954 we printed at the rate of 15,705 per hour. We have lost 823 per hour—and therefore we have to have more presses to do the same work.

1684 "Another reason for necessity to install more presses was the change in press hours from 40 to 37½. By reducing the work week we lost nine hours on each press and just to make up this alone it would have been necessary to add a single width press. If we had printed in August, 1954, at the same rate as August, 1951, we would have required 52 less press hours each week in 1954 than we actually used. If we printed for the first eight months of 1954 at the same rate we were printing for the first eight months of 1951, we would have required 82 hours less per week.

"It is clear that the increase in number of presses was made necessary very largely by: Need for greater flexibility; lower net per hour; shorter work week.

"In August, 1951, we were casting fewer plates per 50,000 and registering fewer plates for each thousand printed. It is necessary to cast 218 more plates per week in 1954 than it was in 1951—using the 1951 ratio.

"In the meantime our competitor's plates for 50,000 has not increased because, with his favorable rates and more 1685 favorable manning, it is possible for him to be selective when he goes after new business.

"3. IS PRODUCTION PER PRESS HOUR NOW RUNNING BETTER THAN EVER IN OUR HISTORY? WAS AUGUST THE BEST MONTH WE EVER HAD FROM A PRODUCTION STANDPOINT?

"I think that when I answered question No. 2, I also told you the reply to question No. 3. We are definitely running far behind 1951 so far as press production per hour is concerned.

"4. HOW DO OUR RATES AND CONDITIONS COMPARE WITH CORRESPONDING RATES AND CONDITIONS IN COMPETING PLANTS?

"You could probably answer this question better than I, but I will describe the rates and conditions as I understand them.

"Our competition is coming from the following principal competitors: Greater Buffalo Press; Acme Color Printing Company; World Color Printing Company at Sparta; and Eastern Color Printing Company at Waterbury.

"For convenience of discussion I am attaching a table showing what I believe to be the rates, manning and conditions existing at this time in each readyprint plant. It is quite clear that our average rate is higher, we used four men, especially on odd size runs such as 10s, 12s, 14s and 20s, and our contract provides much more in the way of other fringe benefits. According to my calculation our fringe benefit costs us approximately 28c per hour overall which is very definitely higher than the average in competing plants.

"What you and I are interested in today is keeping the work we have and obtaining new work if possible.

"Any differential in rates and manning is bound to work against us. In the separate schedule I am giving you a breakdown of the runs we have lost during the past 13 years. You know that in the past month we lost Erie times, Erie Dispatch, Youngstown Vindicator and Toledo Blade to Dunkirk. Two of these runs, Youngstown and Toledo, we have been running for over 25 years, and I believe we have been printing Erie for approximately 20 years.

"Let us study the affect of difference in rates and manning on the cost of printing these particular runs.

1687 "Assuming that running time and registry time are the same the labor cost for pressmen-in-charge and journeymen was higher in Wilkes-Barre than in Dunkirk by \$134.37, when the 12 page supplements were printed.

"When supplements were printed as 14 page sections the supplements for these newspapers could be printed cheaper in Dunkirk by \$250.00 weekly. As 16 pages the difference drops to approximately \$60.00, but when printed as 18 pages the difference is \$299.00.

"Because our competitor knows that we are at a distinct disadvantage when printing 10s, 14s, 18s and 20s he goes to the newspapers and emphasizes the fact that he can print odd sizes cheaper than we and the result is we lose the business

"TO COMPETE SUCCESSFULLY WITH BUFFALO, DUNKIRK AND WATERBURY WE MUST HAVE A MORE ADVANTAGEOUS MANNING TABLE FOR ODD SIZE RUNS.

"You understand of course that no other plant used two pressmen-in-charge on a double width press except possibly when two folders are in operation.

1688 "It is my calculation that the press hour cost for the pressmen-in-charge and journeymen when printing various size runs is higher in Wilkes-Barre than in Dunkirk by the following amounts;

"For 12 page standards, Wilkes-Barre \$4.38 higher per press hour.

"For 14 page standards, Wilkes-Barre higher by \$7.22 per press hour.

"For 16 page standards, Wilkes-Barre higher by .96 per press hour.

"For 18 page standards, Wilkes-Barre higher by \$13.29 per press hour.

"Let us discuss these figures a little further. Let us see what the difference is in cost per thousand four page sections, taking into consideration pressmen-in-charge and journeymen only.

"Wilkes-Barre cost is approximately 25c per thousand higher for 12 page standards.

"Wilkes-Barre cost is approximately 45c per thousand higher for 14 page standards.

"Wilkes-Barre cost is approximately 6c per thousand higher for 16 page standards.

1689 "Wilkes-Barre cost is approximately 75c per thousand higher for 18 page standards.

"When you consider the fact that when running 12 page standards we have as many as four flyboys and when running 14 page standards we have 6 flyboys, when not more than three

can actually work on the deliveries, you can readily see that actual differences in cost are even greater than outlined above.

"You are probably aware of the fact that Dunkirk has cut its labor costs very sharply by use of spiraling trays by the use of which flyboys do all of the stacking on trays. I do not know how many flyboys they use—the contract does not specify, but I know it is not more than two per double width press.

"From time to time it has been pointed out to me that Greater Buffalo registers faster than Wilkes-Barre by use of pre-registry machines. This may be true, but the fact remains that even if both plants were registering exactly the same the advantage would lie with the plant which has the lower labor cost per press hour.

1690 "Among other differences in contract, pointed out in accompanying table, are the following: The right of a man to make up time the following week, which right exists in Wilkes-Barre but not in other plants. The claimed right for substitutes to work doubles to make up time. No other contract specifies this right, and I do not believe ours does either.

"So far as I can determine our principal competitor has no sick leave nor employees club. All told these two items are now costing us approximately \$60,000.00 per year and the cost per hour is included in the fringe clause total of 28¢ referred to above.

"There is probably no need to again emphasize the fact that Greater Buffalo and Dunkirk lie between two transportation zones and are thus able to ship much cheaper than Wilkes-Barre or Peoria. As I have stated so frequently in letters to employees this situation is more or less an accident of birth, but it works to our disadvantage just the same.

"The same might apply to the fact that Dunkirk and Buffalo lie on the Great Lakes and therefore paper is \$1.00 per ton cheaper.

1691 "We may consider it a disadvantage that we have a selling agent. One of the reasons why we have held much of our business, despite differences in labor cost, is King Features' ability to hold printing in many instances by control of circulation rights of features. Of course this is not always possible and certainly no one can blame King Features for sending work elsewhere when it is not possible for us to offer a competing price.

"All of this has been repeated in letter after letter, over and over again, and by me verbally to all members of the various unions. It has been stated that I cried 'wolf' for a long period of time and nothing happened. If the loss of 10,000,000 four page sections since 1941 can be construed by you as 'nothing happened' then I must admit that I am at a loss to understand your viewpoint. Much has happened and more will happen, to our disadvantage and to yours, unless equalization is brought about meeting.

"JOSEPH J. GORMAN,
"HLM.

"INDEX

| 1692 | Page |
|--|------|
| Apprentice Rate and Ratio..... | 3 |
| Arbitration..... | 7 |
| Contract Date..... | 1 |
| Date of Contracts..... | 1 |
| Equalization of Work..... | 5 |
| Flyboys, Number..... | 5 |
| Flyboys and Assistants..... | 3 |
| Foreman, Press Room..... | 7 |
| Foreman, Shift..... | 7 |
| Hours per week..... | 1 |
| Holiday Pay..... | 2 |
| Insurance, Sick and Accident..... | 5 |
| Insurance, Death..... | 5 |
| J Journeyman, Rates..... | 1 |
| Manning new presses..... | 6 |
| Manning table..... | 6 |
| Overtime rates..... | 2 |
| Pressman in charge rate..... | 2 |
| Providing men..... | 6 |
| Press foreman..... | 2 |
| Rates, P. N. in charge..... | 1 |
| Rates, Journeymen..... | 3 |
| Rates Flyboy..... | 5 |
| Retroactivity..... | 5 |
| 1693 Sick Leave..... | 7 |
| Shift Foreman..... | 7 |
| Substitutes..... | 5 |
| Sick-Accident Insurance Insurance..... | 3 |
| Variations..... | 3 |

DATES OF CONTRACTS

| | EFFECTIVE date | EXPIRATION date |
|-------------------------|-------------------|--------------------|
| GREATER BUFFALO..... | 8/21/53 | 8/21/54 |
| DUNKIRK..... | 8/1/54 | |
| WATERBURY..... | 2/28/54 | Extended |
| SPARTA..... | 5/7/51 | 12/19/54 |
| WILMINGTON..... | 8/8/53 | 8/8/54 |
| ACME..... | 3/1/53 | 1/15/54 |
| WILKES-BARRE ICPCO..... | | |

HOURS PER WEEK

| | Day | Night | 3rd shift | Average |
|-------------------------|-----|-------|-----------|---------|
| GREATER BUFFALO..... | 37½ | 37½ | 35 | 36½ |
| DUNKIRK..... | 37½ | 37½ | 37½ | 37½ |
| WATERBURY..... | 40 | 37½ | 35 | 37½ |
| SPARTA..... | 37½ | 37½ | 37 ½ | 37½ |
| WILMINGTON..... | 37½ | 37½ | 37 ½ | 37½ |
| ACME..... | 37½ | 37½ | 37 ½ | 37½ |
| WILKES-BARRE ICPCO..... | 37½ | 37½ | 37½ | 37½ |

1994

JOURNEYMAN RATES

| | Weekly Average | Hourly Average |
|-------------------------|----------------|----------------|
| GREATER BUFFALO..... | \$108.79 | 2,978 (sic) |
| DUNKIRK..... | 99.42 | 2,650 (sic) |
| WATERBURY..... | 100.00 | 2,666 (sic) |
| SPARTA..... | 87.48 | 2,330 |
| WILMINGTON..... | | |
| ACME..... | 100.63 | 2,6835 |
| WILKES-BARRE ICPCO..... | 106.24 | 2,8330 |

PRESSMEN-IN-CHARGE RATES

| | Weekly | Hr. Average |
|-------------------------|----------|-------------|
| GREATER BUFFALO..... | \$116.20 | 3.166 |
| DUNKIRK..... | 114.42 | 3.050 |
| WATERBURY..... | 106.00 | 2.826 |
| SPARTA..... | ??? | ??? |
| WILMINGTON..... | | |
| ACME..... | 106.35 | 2.836 |
| WILKES-BARRE ICPCO..... | 114.85 | 3.0626 |

OVERTIME

| | Daily | Sunday |
|-------------------------|------------|--------|
| GREATER BUFFALO..... | 1½ Double. | |
| DUNKIRK..... | 1½ Double. | |
| WATERBURY..... | 1½ Double. | |
| SPARTA..... | 1½ Double. | |
| WILMINGTON..... | 1½ Double. | |
| ACME..... | 1½ Double. | |
| WILKES-BARRE ICPCO..... | 1½ Double. | |

HOLIDAYS

1895

| | NUMBER | HOW PAID |
|-------------------------|--------|-----------------------|
| GREATER BUFFALO..... | 6 | Double when worked. |
| DUNKIRK..... | 6 | Double when worked. |
| WATERBURY..... | 6 | Double when worked. |
| SPARTA..... | 6 | |
| WILMINGTON..... | 6 | |
| ACME..... | 6 | 1½ first seven hours. |
| WILKES-BARRE ICPCO..... | 6 | Triple when worked. |

VACATIONS

| | |
|-------------------------|---|
| GREATER BUFFALO..... | Two weeks after 1 year, 3 weeks after 5 years |
| DUNKIRK..... | Two weeks after 1 year's service, 3 weeks after 6½ years |
| WATERBURY..... | 1 week after one year, 2 weeks after 3 years |
| SPARTA..... | 1 week after 1 year, 2 weeks after 3 years |
| WILMINGTON..... | 1 week after one year, 2 weeks after 2 years |
| ACME..... | 2 weeks after 1 year, 3 weeks after 10 years |
| WILKES-BARRE ICPCO..... | |

APPRENTICE RATIO AND RATE

| | RATIO | RATE |
|-------------------------|-----------------------------------|-----------------|
| GREATER BUFFALO..... | 1 to 10..... | 50% of J.M. Up. |
| DUNKIRK..... | 1 to 8 (not observed). | 50% Up. |
| WATERBURY..... | | |
| SPARTA..... | | |
| WILMINGTON..... | | |
| ACME..... | 1 to Crew..... | |
| WILKES-BARRE ICPCO..... | 1 to 10..... | 75% Up. |

1896

FLYBOYS AND ASSISTANTS

Rate

| | | |
|-------------------------|----------------------|---------------------|
| GREATER BUFFALO..... | Juniors..... | No scale indicated. |
| DUNKIRK..... | | |
| WATERBURY..... | Assistants..... | \$45 up to \$75. |
| SPARTA..... | | |
| WILMINGTON..... | | |
| ACME..... | One each folder..... | |
| WILKES-BARRE ICPCO..... | \$45 to \$75..... | |

SICK AND ACCIDENT INSURANCE

| | |
|-------------------------|---|
| GREATER BUFFALO..... | Nothing in Contract |
| DUNKIRK..... | Nothing in Contract |
| WATERBURY..... | Blue Cross |
| WILMINGTON..... | |
| SPARTA..... | |
| ACME..... | |
| WILKES-BARRE ICPCO..... | Blue Cross and one-half Blue Shield, Also employees Club |

INSURANCE—DEATH

| | |
|-------------------------|--|
| GREATER BUFFALO..... | Nothing in Contract |
| DUNKIRK..... | Nothing in Contract |
| WATERBURY..... | Nothing in Contract |
| SPARTA..... | |
| WILMINGTON..... | |
| ACME..... | |
| WILKES-BARRE ICPCO..... | Nothing in Contract Group Insurance |

SICK LEAVE

| | |
|-------------------------|---|
| GREATER BUFFALO..... | None indicated in Contract |
| DUNKIRK..... | None indicated in Contract |
| WATERBURY..... | After 5 successive days illness, Dr. certificate may be required |
| SPARTA..... | None |
| WILMINGTON..... | |
| ACME..... | None |
| WILKES-BARRE ICPCO..... | After 15 years service one week |

RETROACTIVE

| | |
|-------------------------|---|
| GREATER BUFFALO..... | Nothing indicated in contract |
| DUNKIRK..... | Nothing indicated in contract |
| WATERBURY..... | Yes |
| SPARTA..... | |
| WILMINGTON..... | |
| ACME..... | |
| WILKES-BARRE ICPCO..... | Yes |
| GREATER BUFFALO..... | Nothing in Contract |
| DUNKIRK..... | Nothing in Contract |
| WATERBURY..... | Nothing in Contract |
| SPARTA..... | Nothing in Contract |
| WILMINGTON..... | Nothing in Contract |
| ACME..... | Nothing in Contract |
| WILKES-BARRE ICPCO..... | Contract Provision applies to reg- ularly marked up men. |

NUMBER OF FLY BOYS

| | |
|-------------------------|---|
| GREATER BUFFALO..... | Contract does not specify, up to management |
| DUNKIRK..... | Contract does not specify, up to management |
| WATERBURY..... | One 'A' on each crew |
| SPARTA..... | One assistant each two journeymen— one flyboy per folder |
| WILMINGTON..... | One flyboy per folder |
| ACME..... | One flyboy or apprentice each single width, three |
| WILKES-BARRE ICPCO..... | Flyboys each double width press |

PROVIDING MEN

| | |
|-------------------------|--|
| GREATER BUFFALO..... | Union Provides |
| DUNKIRK..... | Management may hire anyone when and if Union men are not available. Same as Dunkirk. |
| WATERBURY..... | Union Provides. |
| SPARTA..... | |
| WILMINGTON..... | |
| ACME..... | |
| WILKES-BARRE ICPCO..... | Union agrees to provide sufficient men |

MANNING NEW PRESSES

| | |
|-------------------------|--|
| 1698 | |
| GREATER BUFFALO..... | Manning schedule rediscussed only if extra labor involved |
| DUNKIRK..... | Rediscussed if new type of presses are proposed |
| WATERBURY..... | No provision |
| SPARTA..... | |
| WILMINGTON..... | |
| ACME..... | |
| WILKES-BARRE ICPCO..... | Manning of any new press to be rediscussed |

PRESS FOREMAN

| | |
|-------------------------|-----------|
| GREATER BUFFALO..... | All |
| DUNKIRK..... | Contracts |
| WATERBURY..... | About |
| SPARTA..... | The |
| WILMINGTON..... | Same |
| ACME..... | |
| WILKES-BARRE ICPCO..... | |

SHIFT FOREMEN

| | |
|-------------------------|---------------------------|
| GREATER BUFFALO..... | No provision in Contract |
| DUNKIRK..... | No provision in Contract |
| WATERBURY..... | No provision in Contract |
| SPARTA..... | |
| WILMINGTON..... | |
| ACME..... | |
| WILKES-BARRE ICPCO..... | Provided for in Contract. |

1790 SUBSTITUTES

| | |
|-------------------------|--|
| GREATER BUFFALO..... | Contract does not give subs free rights to O.T. |
| DUNKIRK..... | Contract does not give subs free rights to O.T. |
| WATERBURY..... | Contract does not give subs free rights to O.T. |
| SPARTA..... | Contract does not give subs free rights to O.T. |
| WILMINGTON..... | Contract does not give subs free rights to O.T. |
| ACME..... | Contract does not give subs free rights to O.T. |
| WILKES-BARRE ICPCO..... | Disagreeing opinions on the subject. |

ARBITRATION

| | |
|-------------------------|-----|
| GREATER BUFFALO..... | Yes |
| DUNKIRK..... | Yes |
| WATERBURY..... | Yes |
| SPARTA..... | Yes |
| WILMINGTON..... | Yes |
| ACME..... | Yes |
| WILKES-BARRE ICPCO..... | Yes |

September 15, 1954

PRESS SCALES AND CONDITIONS—READYPRINT PLANTS

MANNING OF PRESSES

Buffalo

Single width presses:

Buffalo Color Press: Same as before.

1731 Greater Buffalo Press

4 Color Runs:

| | | |
|--|-------|------|
| 4 Color pages or 8 four-color pages collect plus imprint deck..... | 1 CH. | 2 J. |
| 6 Pages or 12 collect..... | 1 | 3 |
| 8 Pages or 16 collect..... | 2 | 3 |
| 10 Pages or 20 collect..... | 2 | 5 |
| 12 Pages or 24 collect..... | 2 | 6 |
| 14 Pages or 28 collect..... | 2 | 7 |
| 16 Pages or 32 collect..... | 3 | 6 |

Black and White Runs:

| | | |
|------------------------------------|---|------|
| Minimum Crew..... | 1 | 2 |
| 3 Roll Runs..... | 1 | 3 |
| 4 Roll Runs..... | 1 | 4 |
| 5-6 Roll Runs..... | 1 | 5 |
| Proof Press (Greater Buffalo)..... | 1 | 1 IA |

Foreman not member of Press Crew when more than 1 press in operation

Dunkirk

Double width Press:

| | | |
|--------------------------------|-------|------|
| 8 Cylinders, 1 folder..... | 1 CH. | 4 J. |
| 8 Cylinders, 2 folders..... | 1 | 5 |
| 12 Cylinders, 1-2 folders..... | 1 | 6 |
| 16 Cylinders..... | 2 | 6 |
| 20 Cylinders..... | 2 | 7 |

Foreman not member of crew if more than one press in operation.

1782

San Bernardino

1 Flyman for each folder in operation

1 Additional Journeyman for each color added.

Foreman not member of crew.

Sparta

1 Journeyman to each two plate cylinders

1 Assistant to each 2 journeymen

1 Apprentice

1 Flyman to each folder in operation.

Waterbury

Decker Type Single Width:

| | | | |
|-------------------------------|-------|------|---|
| 4 or 5 Decks, 1 roll..... | 1 CH. | 1 J. | 1 |
| 4, 5 or 6 Decks, 2 rolls..... | 1 | 2 | 1 |
| 4, 5 or 6 decks, 3 rolls..... | 1 | 3 | 1 |

Plate Ready Bench.....

Foreman not member of crew if more than 1 press in operation.

Wilkes-Barre

| | 1 | Ch. | 2 | J. | 1 | Fly. |
|---|---|-----|---|----|---|------|
| Two Plate Wide Presses: | | | | | | |
| 4-5 Deck | 1 | | | | | |
| Four Plate Wide Press 2055: | 2 | | 3 | | 3 | |
| 8 Cylinders | | | | | | |
| 1 Additional Flyboy when two folders in operation | | | | | | |
| Four Plate Wide Pancoast Press 2091: | 2 | | 3 | | 1 | |
| 4 Decks | 1 | | 2 | | 1 | |
| 1703 2 Decks | 2 | | 3 | | 3 | |
| Four Plate Wide Pancoast Press 2042: | 1 | | 2 | | 1 | |
| 4 Decks | 2 | | 3 | | 1 | |
| Press 2042 A | 2 | | 3 | | 3 | |
| Pancoast Press 2531 | | | | | | |

1 Additional Journeyman when 2 rolls are used.

1 Journeyman and 1 Flyman to get Mirror Plates ready to be put on the press.

Foreman not member of operating crew.

I.C.P. CO. RUNS LOST TO COMPETITORS—September 13, 1954

BUFFALO COLOR

| | |
|--------------------------------|---------------|
| Borger, Tex., Herald | 10,800 |
| Durango, Colo., News | 2,000 |
| Gladewater, Tex., Daily Mirror | 5,500 |
| Lakeland, Fla., Ledger | 8,900 |
| TOTAL | 27,200 |

SOUTHERN COLOR

| | |
|------------------------------|--------|
| Albany, Ga., Herald | 10,500 |
| Burlington, N.C., Times-News | 30,000 |
| Fayetteville, N.C., Observer | 40,000 |
| Florence, S.C., Morning News | 12,250 |
| Gastonia, N.C., Gazette | 39,500 |
| High Point, N.C., Enterprise | 41,500 |

1704 *SOUTHERN COLOR* (Cont'd)

| | |
|-----------------------------------|----------------|
| Johnson City, Tenn., Press Chron. | 40,600 |
| Newport News, Va., Press | 68,000 |
| Petersburg, Va., Progress Index | 32,000 |
| Portsmouth, Va., Star | 24,800 |
| Rocky Mount, N.C., Telegram | 24,500 |
| Salisbury, N.C., Post | 33,500 |
| West Palm Beach, Fla., Post Times | 60,000 |
| TOTAL | 457,150 |

ACME

| | |
|------------------------------------|----------------|
| Albuquerque, N.M., Journal | 30,000 |
| Amarillo, Tex., Times | 86,000 |
| Clovis, N.M., Chronicle | 5,000 |
| Durant, Okla., Democrat | 11,000 |
| Henryetta, Okla., Free Lance | 3,000 |
| Hot Springs, Ark., Sentinel-Record | 7,400 |
| Lawton, Okla., Press | 32,000 |
| Odessa, Tex., Morning Herald | 5,000 |
| Pocatello, Idaho, State Journal | 24,000 |
| Portales, N.M., Tribune | 3,000 |
| Seminole, Okla., Producer | 5,000 |
| Victoria, Tex., Advocate | 2,700 |
| TOTAL | 214,100 |

1705 EASTERN COLOR

| | |
|---------------------------------|---------|
| Bangor, Me., News | 155,000 |
| Fairmont, W. Va., Times | 17,000 |
| Jackson, Miss., News | 82,000 |
| Lowell, Mass., Sunday Telegram | 15,000 |
| New Brunswick, N.J., Times | 25,000 |
| Parkersburg, W. Va., News | 43,000 |
| Wheeling, W. Va., News Register | 44,500 |
| Jackson, Miss., Clarion Ledger | 106,500 |

TOTAL

488,000

GREATER BUFFALO

| | |
|----------------------------------|---------|
| Columbus, Ohio, Star | 180,000 |
| Detroit, Mich., Free Press | 662,000 |
| Fargo, N.D., Forum | 103,000 |
| London, Ont., Canada, Free Press | 124,000 |
| Miami, Fla., News | 448,000 |
| Nashville, Tenn., Tennessean | 381,000 |
| Roswell, N.M., Sunday Record | 6,800 |
| Sioux Falls, S.D., Argus Leader | 106,500 |
| Syracuse, N.Y., Post Standard | 209,000 |
| Erie, Pa., Dispatch Herald | 192,000 |
| Erie, Pa., Sunday Times | 92,000 |
| Toledo, Ohio, Blade | 705,600 |
| Youngstown, O., Vindicator | 429,000 |

TOTAL

3,638,900

FORT WORTH

| | |
|----------------------------|---------|
| Dallas, Tex., Times Herald | 612,000 |
| TOTAL | 612,000 |

OWN

| | |
|-------------------------------------|-----------|
| Oakland, Calif., Post Enquirer | 200,000 |
| Omaha, Nebraska, World Herald | 1,028,000 |
| Jamaica, L.I., Press | 500,000 |
| Newark, N.J., Star Ledger | 700,000 |
| Harrisburg, Pa., Patriot News Novel | 250,000 |
| Harrisburg, Pa., Patriot News Mag | 250,000 |

TOTAL

2,928,000

STAR

| | |
|--------------------------------|--------|
| Wilmington, Dela., Sunday Star | 48,000 |
| TOTAL | 48,000 |

WORLD COLOR

| | |
|-------------------------------|---------|
| Decatur, Ill., Herald Review | 135,000 |
| East St. Louis, Ill., Journal | 75,000 |
| Urbana, Ill., Courier | 59,250 |

TOTAL

269,250

GRAND TOTAL

8,682,600

Mr. BERNSTEIN: The Government offers in evidence De
position Page 19—

The COURT: Which deposition is that?

1707 Mr. BERNSTEIN: Frank J. Nicht, dated March 20
1961, lines 16—excuse me—line 11.

Mr. RAICHLE: To where?

Mr. BERNSTEIN: I'm going to 18, page 19:

"Q. Does King Features Syndicate employ salesmen?

"A. Yes, sir.

"Q. Do these salesmen travel, to your knowledge, throughout the country?

"A. Yes, sir.

"Q. About how many salesmen does King Features Syndicate employ?

"A. Twelve to fourteen."

Mr. BERNSTEIN: On page 35, line 21:

"Q. I believe you listed the competitors of King Features Syndicate from 1950 to 1954. Directing your attention now, during that period, to Northeastern or New England States, do you know whether in the years 1950 to 1954 King Features Syndicate sold newspaper publishers, and I am referring now only to color comic supplements, located in the New England area?

"A. I think so.

"Q. Referring now only to the New England area
1708 during those years, who were your competitors?

"A. I have already stated that.

"Q. You told me all the competitors of King Features Syndicate and I want to know only in the New England area. That is, if you know?

"A. The chief one would be Eastern, Eastern at Waterbury.

"Q. Anyone else?

"A. Greater Buffalo.

"Q. Anyone else that you can think of?

"A. I can't think of any.

"Q. In regard to, say, Acme Colorprint Corporation, where were they located?

"A. San Bernardino, California.

"Q. Did you consider at that time Acme to be the competitor of King in the New England area?

"A. No, sir."

Mr. BERNSTEIN: Page 37, line 3:

"Q. Southeastern, referring to the southeastern area of the United States—and I am referring now particularly to the States of Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina and North

1709 Carolina, do you know whether during the years 1950 to 1954 King Features Syndicate sold color comic supplements to newspapers located there?

"A. Yes, sir.

"Q. Referring to that area and during the years 1950 to 1954, who were the competitors of King?

"A. Greater Buffalo, NEA, Southeastern Color Printing Company, I believe they print at Newport News, Virginia.

"Q. What was that name again, sir?

"A. Southeastern, I think. I think that is the name.

"Q. Is that Southeastern or Southern Color?

"A. Southern Color, I think that is it, yes. And the Star Color Company of Wilmington.

"Q. In that area, then, do you know whether Star was considered a big factor, or it had a large volume in regard to the sales of color comic supplements?

"A. It wasn't regarded as a big factor then.

"Q. Are there any other competitors you can think of who sold and competed with King in that area?

"A. Perhaps World Color of St. Louis. I'm not sure.

"Q. You don't know?

"A. I don't know.

1710 "Q. Referring to the western part of the United States, and that will be west of the Rockies, did King Features Syndicate sell color comic supplements in that area?

"A. Yes, sir.

"Q. Who were the competitors of King in that area in the years 1950 to 1954?

"A. That would be Acme at San Bernardino on a very limited scale, Greater Buffalo, NEA.

"Q. When you say Acme on a limited scale, do you mean by that that they were a small or minor competitor of King Features?

"A. I think that is in reverse. We were small in comparison with them.

"Q. In other words, Acme was the leading competitor; is that correct?

"A. We couldn't compete with them.

"Q. Why couldn't you compete then with Acme?

"A. Because of our location. Our plants were too far East.

"Q. By 'location,' do you mean the transportation costs or any other costs involved?

"A. Yes, sir."

1711 Mr. BERNSTEIN: The Government at this time moves that all of the evidence admitted against NEA only, with the right reserved to be admitted against Greater Buffalo as a declaration of a co-conspirator be received as against Greater Buffalo under the co-conspirator rule.

Mr. RAICHLE: To that we object; Your Honor reserved.

The COURT: I shall reserve decision on that.

Mr. BERNSTEIN: The Government moves at this time, with respect to those exhibits which it offered as against NEA subject to later connection, that they now be received as against the Defendant NEA under the co-conspirator rule.

Mr. STEVENS: NEA objects.

The COURT: Same ruling.

Mr. BERNSTEIN: The Government requests permission to insert in the record a composite stipulation so that we can have one document rather than this series of stipulations.

Mr. RAICHLE: I think it would be desirable.

Mr. STEVENS: We urge greatly it be done.

Mr. BERNSTEIN: The Government will do that.

1712 The Government also keeps the record open for the purpose of inserting the testimony concerning what was offered as P-69 and then withdrawn, unless some stipulated testimony can be received.

The COURT: All right. I would like to know about that. That is going to change things around a bit if you are going to take a considerable amount of live testimony.

Mr. RAICHLE: We will try to work that out.

The COURT: All right.

Mr. BERNSTEIN: I am sure we can.

The COURT: All right.

Mr. BERNSTEIN: The Government now moves to amend the complaint by deleting the following language on page 10, paragraph 4: "The defendant Greater Buffalo, since about June 1955, has monopolized—". Delete from page 13, paragraph 30(d): "The defendant Greater Buffalo has obtained a monopoly of the printing of color comic supplements in 1713 the United States."

The COURT: That is just in furtherance of the announced intention some time ago?

Mr. BERNSTEIN: That is correct.

The COURT: Granted.

Mr. BERNSTEIN: This is the formal motion.

The COURT: That is granted.

Mr. BERNSTEIN: Page 13, paragraph 1: "And that the defendant Greater Buffalo has monopolized—".

The COURT: Granted.

Mr. BERNSTEIN: Page 14, paragraph 5: "And the monopolization of the aforesaid interstate trade—".

The COURT: Granted.

Mr. BERNSTEIN: Except for the reservations I have made, Your Honor, the Government rests.

The COURT: Now, we have laid out a schedule of events. You, Mr. Bernstein, are going to send me a letter, and copies to each party of those events, and if there is any misunderstanding let me hear promptly. I think we ironed it out
1714 this morning. All right, gentlemen.

(Thereupon, the court was adjourned at 3:55 p.m.)

[Caption Omitted In Printing]

Proceedings held before the Hon. JOHN O. HENDERSON, United States District Court Judge, Western District of New York, on January 19, 1966, at Buffalo, New York.

APPEARANCES: *Lewis Bernstein, Esq.*, and *Elliott P. Feldman, Esq.*, Antitrust Division, Department of Justice, appearing for Plaintiff.

Frank G. Raichle, Esq., 10 Lafayette Square, Buffalo, New York, appearing for Greater Buffalo Press.

Richard F. Stevens, Esq., and *Bourne P. Dempsey, Esq.*, 1956 Union Commerce Bldg., Cleveland, Ohio,
1716 appearing for NEA.

PROCEEDINGS OF JANUARY 19, 1966, COMMENCING AT
2:00 PM

The COURT: Gentlemen.

Mr. BERNSTEIN: Good afternoon, Your Honor. May it please the Court: The principal issue before the Court today is whether the plaintiff has proven *prima facie* that in 1954 Greater Buffalo and King were engaged in a combination in restraint of trade through agreements not to compete with each other and that when Greater Buffalo acquired International as a consequence of this combination then it became clear that the purpose of the combination was to permit Greater Buffalo to monopolize the printing of color comic supplements

for newspapers which did not print their own and with
1717 King to monopolize the sale of the printed supplements.

This was later joined by NEA in the fall of 1955. If the plaintiff has proven what I have just said by the testimony and the documents that are now in evidence, then the documents under advisement—or virtually all of them, or most of them with one or two exceptions—most of the documents under advisement should now be received in evidence.

Now, to demonstrate that the plaintiff has proven this, we will first describe the nature of the competition that had existed between Greater Buffalo, King and NEA at the time that the agreements, which constituted the combination in restraint of trade, were entered into. I have some visual aids, if the Court will excuse me, I believe this might be helpful.

In Chart 1 here, we attempt to show the nature of the competition in 1954. The principal product involved was colored comic supplements and therefore we start out with the
1718 newspapers. Seventy percent of all of the printed sup-

plements contained in newspapers, comic supplements, that is, were not printed by the newspapers themselves but were printed by color comic printers. Thirty percent of the supplements were printed by newspapers themselves and therefore nobody sold them to them. Those that were not printed themselves were sold by King and Greater Buffalo, who were the two principal competitors for the sale of these supplements, and they were also sold by NEA and they were also sold by other color printers. There was a difference in the business between King and Greater Buffalo and NEA. King and NEA, their business was pretty much the same to the extent that both of them sold features to the newspapers, the copyrighted

rights to the color comics; whereas Greater Buffalo only
1719 sold the printing service. The important thing about that, your Honor, is that Greater Buffalo's business depended on the assumption that the newspaper had already received a copyright, the newspaper was already using color comic supplements to which it had been licensed. Greater Buffalo's business was to induce them, to say "instead of having somebody else print your features, or instead of printing it yourself, we will do the printing for you; you get the license, you have the license, we will do the printing for you". Not so King and NEA. King and NEA, although they did the same thing, they too said to the newspapers, "we will do the printing for you not

only of the features that we license, even other features that you have, we will do that printing too." But, in addition, they sold the features along with the printing or they sold 1720 the printed supplements together.

Now, a word about what is sometimes called ready-print. King started in this business originally through Hearst when it found that it printed a package of four or five or six comic features in one supplement for its own newspapers, and then it would go around to smaller newspapers and say, "Look, we have got these printed for our own, all we have to do is change the masthead and you can have the same package" and, hence it became known as readyprint. Greater Buffalo's business was a little different. Greater Buffalo would go around and say, "What features are you now having printed; we will do the printing for you." And so there came a time that King and NEA had to also get into that business of selling not only the readyprint in that fashion but also to sell the printing. That was the nature of the competition in and around January 1954, when Nicht testified that he made a deal with 1721 Koessler of Greater Buffalo and that deal was, that for two newspapers, which had previously printed their own, the Gannett newspapers with headquarters in Rochester, the newspapers being the Binghampton newspaper and the Utica newspaper, and he made a deal with Koessler that Koessler would take one of them, he would take the other, they would not compete for that business. Now, in the eyes of the law that becomes an allocation of customers; that is an agreement between two competing sellers not to compete for the business—

The COURT: Well, just a minute, you said the newspapers that printed their own, they would divide those newspapers up.

Mr. BERNSTEIN: May I say it again? These Gannett newspapers had two newspapers, one in Utica, New York and one in Binghampton, and they had been printing their own, and King wanted the business of printing both of them because 1722 Gannett was not going to print their own any longer, they were going to give it to somebody else. Who were they going to give it to; either Greater Buffalo or they could give it to King or presumably they could give it to some other color printer or NEA. We do know that the testimony of Nicht was that he and Greater Buffalo were in competition for that business and they made an arrangement that Koessler was to

take one, Nicht the other. Nicht wanted both but that was the way they made the arrangement, that is, the agreement to allocate half of that business, and it is a violation of Section 1 of the Sherman Act, and it is illegal. Nicht testified that a little while later there was another newspaper in Waterloo, Iowa, and he and Koessler were in competition for that business, and so it was agreed, he said, with Koessler, that he would not solicit that business, that Koessler would get that business in 1723 Waterloo. It isn't clear from the record now in evidence, although some of the documents that are under advisement clarify it. As far as the record stands now it is not clear whether the Waterloo, Iowa newspaper was a newspaper that printed its own or was a newspaper that had previously been serviced by someone else. The Government contends that it was previously serviced by someone else; Waterloo, Iowa.

In any event, the contract had expired, they were competing for that business, King and Greater Buffalo. Nicht testified that they agreed Greater Buffalo would take the account and King would receive a kick-back of \$50 a week, and the way they were to receive that kick-back was that King was going to bill Greater Buffalo for "special mat service" —

The COURT: Now, right there, how were they going to keep someone else out?

Mr. BERNSTEIN: It was not keeping someone else 1724 out. Right there, the Government contends they eliminated competition between each other for that account.

The COURT: Somebody else has done it before apparently?

Mr. BERNSTEIN: The Government contends it was either King or Greater Buffalo that did it before, but my last statement is not in the record as of this point.

Now, Nicht's testimony further is that some time between January 1954 and June—some time in 1954—the Government contends that it would be around April 1954—there is no evidence in the record on that date yet, that is in the documents under advisement—but it is clear in the record it was in 1954 that Nicht testified that he made another arrangement with Koessler and that was to leave each other pretty much alone, that they would not compete for accounts of each other's customers.

Now, a word about the nature of their business. When a syndicate or a color printer had the business of news- 1725 papers, it was generally done by a contract, a written

contract, which generally provided for a period of time, a year or whatever it was, with the right to expire or renew or something like that; so that they were not on a day-to-day basis in competition for a particular newspaper, on a daily basis; they were only in competition for that newspaper when its contract was about to expire when he would then solicit business from other color printers or other syndicates or other syndicates or color printers would solicit his business. So in view of that, Nicht's testimony that he and Koessler agreed to leave each other pretty much alone means that if they already had an account, they would not solicit the other's account. That too is a violation of Section 1, a conspiracy in restraint of trade.

There is further evidence of this, not only Nicht's 1726 testimony; we have Koessler's written letters to Nicht in which he says that 'we have reached an understanding which I will agree to put into a formal contract'; but an examination of the document, an examination of the several documents, shows that they had several discussions and the kind of language they were shaping was precise language that could go into a formal contract. They had reached agreement on the substance, they were now trying to develop the language that would express the substance of what they had agreed on. One of the things that Koessler said to Nicht in the letters was that 'We agree that you will keep your accounts, we will keep our accounts.' This is an agreement between competing sellers not to compete for the existing business of each other and is a Section 1 violation.

Now, in that posture of things, what was happening? King had a contract with International, that had been in 1727 effect for a long time, that International was to print only for King, it was not to print for any other syndicate or anyone else, it was only to print for King; and King had virtually all of its supplements printed with International. International was not pleased with the amount of revenues it was receiving, it was not pleased with the profits of its business. It had been owned by a family that were absentees, were not there, and they were entirely at the mercy of King who—if King didn't give them the business or didn't give them the price, they had no business unless they sought it elsewhere. They had a contract with King that was terminable on six months' notice by either party. They were seeking to sell out, they were seek-

ing to sell their contract. Now, it was in this posture that King had had this arrangement with Greater Buffalo that they were not going to compete for each other's customers, and 1728 International was thinking of selling out, when Nicht testifies he made another arrangement with Koessler. Koessler proposed to open up a printing plant at Lufkin, Texas, and his motive in doing that was to provide his customers in the southwest and southern area with cheaper transportation rates by printing in that area. The Government does not criticize that. At the same time, King, which had most of the business in the south, also wanted to accomplish the same thing, and not let Greater Buffalo get ahead of it in securing that business, and it was persuading and inducing, and it had reached the point where International had voted, by its Board of Directors, to proceed with the establishment of a plant in Sylacauga, Alabama.

The COURT: Say that again.

Mr. BERNSTEIN: King and Greater Buffalo were—

The COURT: I am talking about the Sylacauga plant, 1729 what did you say about that?

Mr. BERNSTEIN: International was contemplating—it was more than contemplation—the Board of Directors had voted it, they had entered into a newsprint contract to do that and they proposed to open up a plant in Sylacauga, Alabama for the purpose of providing cheaper transportation rates to the customers in the south and southwest area. Those customers were then owned by King. King at that time was in competition with Greater Buffalo for customers in that area and Greater Buffalo, to service the customers in that area, was making plans to open up a plant in Lufkin, Texas. The plant in Lufkin, Texas—or stated another way—

The COURT: I take it you mean International, which was not happy, encouraged by King, was thinking about Sylacauga?

Mr. BERNSTEIN: It was doing more than that; it had made a contract with a newsprint company to furnish the 1730 newsprint to the plant; the Board of Directors had voted for them to go; all of this was done through King's urging and King's assistance and at the same time.

The COURT: Where is the proof in this case of that?

Mr. BERNSTEIN: Yes, your Honor. The proof in the case of that Exhibit 54—

Mr. RAICHLE: You don't claim that International ever made a contract for the paper? You look at the record; King made a contract for paper.

Mr. BERNSTEIN: I stand corrected. King made a contract to have newsprint delivered to a plant in Sylacauga, Alabama, and Exhibit 54 in evidence is the Director's Minutes of International that shows that it had authorized the proceeding.

Mr. RAICHLE: It wasn't for Sylacauga, it was some place in the south.

Mr. BERNSTEIN: It was for the Sylacauga plant.

Mr. RAICHLE: You are mistaken again.

The COURT: I wanted to know the basis upon which you made that statement. All right. King and International 1731 have something they want to work out, according to you, advantageous to each other.

Mr. BERNSTEIN: Are you saying King and International?

The COURT: That is right.

Mr. BERNSTEIN: Yes. King and International want to open a plant in Sylacauga, the plant in Sylacauga, Alabama is going to be in competition with the Greater Buffalo plant in Lufkin.

The COURT: All right, go ahead.

Mr. BERNSTEIN: It is at that time in the posture of things, in the posture of Nicht's agreement with Koessler to leave each other's customers alone, that Nicht testified that he had also agreed with Koessler that when the Lufkin plant would open that Nicht would transfer runs from International's plant into Lufkin with the understanding that he would receive a kick-back of fifty cents for each supplement printed at that 1732 plant, whether the business was gotten by King or whether the business had already been in the plant by Greater Buffalo. The Government contends this is another part of the same conspiracy to allocate customers and eliminate competition.

While all of these things were going on, International was unhappy about its revenue, it was looking to sell, and several propositions were in the wind. Those are contained in the documents under advisement, that is, not in evidence. The fact of the matters in evidence is that Nicht and Koessler reached an understanding. It had not reached the form of a formal contract in all aspects, in many aspects it did. They reached an understanding in sufficient substance that they were talking about the terms of the contract that would be entered into; and what

1733 was the understanding—this is before the acquisition of International, your Honor,—the understanding was that Greater Buffalo would buy International, International's stock.

The COURT: Now, tell me why. Do you know a motive for that?

Mr. BERNSTEIN: Yes, that is the next sentence. The motive is that Greater Buffalo agreed that it would not print for any other syndicate, it would print only for King, and King would have its printing done nowhere else other than Greater Buffalo or International, which would be owned by Greater Buffalo.

The COURT: Can you spell that out?

Mr. BERNSTEIN: Yes, your Honor, I will spell it out. I present to your Honor Exhibits 15 and 16 in evidence. On Exhibit 16, your Honor, on page 4, paragraph 9, here is what Mr. J. W. Koessler, President of Greater Buffalo Press, agrees with Nicht: "For the period of this contract, the Greater Buffalo Press, Inc., will contract to print newspaper supplements only for such

1734 accounts as it presently holds"—that is, Greater Buffalo's business—"and for such new accounts as it is privileged to negotiate and contract under this agreement, and for King Features Syndicate." That means it will print only for King Features, only for the accounts that it is authorized to print under this contract then and for no one else—

Mr. RAICHLE: That contract was never signed.

Mr. BERNSTEIN: In the next paragraph King Features undertakes to process all of its contracts for printing only through Greater Buffalo or International. On the first page of the document: "The Greater Buffalo Press, Inc., and King Features Syndicate will hold, and continue to hold such contracts and business as the Greater Buffalo Press and King Features Syndicate presently have." In other words, the intent of the parties was clear. Now, we also know by the evidence in the—strike that out. The testimony in this case is that King

1735 and Greater Buffalo were the largest sellers of color comic supplements. It is the Government's contention from a document under advisement, but which is in admission against Greater Buffalo, I think the dispute of the document under advisement is whether it should go in against NEA, and that is the share of the market. The share of the market is that by the acquisition there was sixty-three percent

of all of the printing done by both Greater Buffalo and International combined. So that with King's intent that Greater Buffalo do the printing only for itself and for King, and the two of them would share in the selling—and the contract specifies which newspapers will be sold by which—then it is clear that the intent of both parties is that Greater Buffalo is to dominate the printing of the color comic supplements for those newspapers which do not print their own, and the two of them are going to share in that arrangement, and 1736 that constitutes what started out as an agreement to eliminate competition for two accounts, and then another account, and then for all accounts, and then eliminate competition in Lufkin, Texas, and now constitutes an agreement to eliminate competition for all accounts, with Greater Buffalo to be the only printer and no syndicate to have the opportunity to be printed by Greater Buffalo, and that, the Government contends, constitutes a violation of Section 2 of the Sherman Act or a conspiracy to monopolize in the form that I have just alleged.

The COURT: Now, you said originally that King and International had intended this Sylacauga plant, and then it winds up that Greater Buffalo—

Mr. BERNSTEIN: That is correct.

The COURT: Tell me about that.

Mr. BERNSTEIN: Yes. That arises out of the fact that by the acquisition of International, Greater Buffalo is now 1737 in a position to open up the Sylacauga plant and is now in a position to open up the Lufkin plant, and the competition between Greater Buffalo and King in the south and southwest is eliminated because Greater Buffalo is to do the printing—

The COURT: You said originally that King provoked International—

Mr. BERNSTEIN: That is right.

The COURT: —to put the printing plant down there.

Mr. BERNSTEIN: That is right.

The COURT: What transpired there? There is a fuzziness there to me.

Mr. BERNSTEIN: May I try and clarify it this way. Because we are looking at conduct which started in January 1954 and right now we are—

The COURT: Were these people crowding each other so hard, King and Greater Buffalo?

Mr. BERNSTEIN: King and Greater Buffalo were crowding each other hard up to January 1, 1954.

The COURT: King devised this plant down south, using International, you say, to open the Sylacauga plant.

Now, that sounds like a good idea.

Mr. BERNSTEIN: That is right.

The COURT: What happened? I don't understand what happened to change that. Is there an easier way suggested?

Mr. BERNSTEIN: If the documents under advisement are received in evidence, we will see what happened, this shows what Nicht had in mind. I am trying to rely on the evidence that is in the record right now, and the Government contends that what happened, your Honor, is that Nicht and Koessler made a deal that as long as Nicht was going to be assured that it was going to be the exclusive seller for Greater Buffalo, it was not worried about Greater Buffalo buying International and opening the plant in Sylacauga; it didn't need to, it still wanted International to open the plant in Sylacauga, and it did, but it did under Greater Buffalo's auspices because Greater

Buffalo acquired the stock in International.

1739 The COURT: Yes, I understand. In other words, you state that pursuant to all this Greater Buffalo bought International, part and parcel of the whole—

Mr. BERNSTEIN: It was all part and parcel of one arrangement.

The COURT: That family in Scranton just sold out, right?

Mr. BERNSTEIN: Govine?

The COURT: This tired family of printers known as International sold out?

Mr. BERNSTEIN: Sold out to Greater Buffalo, yes. Now, it is the Government's contention that King did two things that permitted or facilitated or inspired or induced Greater Buffalo to acquire International. The Government contends that King, relying on International as its printer, unless it had a printer to go to or unless it printed its own, could not be in the business of selling supplements to newspapers. It had to have a printer and it was relying entirely on International for its printing. The Government contends that for King to permit its chief competitor to buy International it had to have some assurance, it had to have some arrangement or else it would not have permitted it. What was the arrangement? The arrangement was that it entered into a ten-year

contract with International so that it was sure that for ten years Greater Buffalo would continue to print for it and it wouldn't be entirely at its mercy. That was the first thing it did. Up until that point it had a contract that was terminable on six months' notice. The Government contends that because it could terminate that contract on six months' notice, that by entering into a ten-year contract with International, obligating itself for ten years, it thereby facilitated and aided the sale of

International to Greater Buffalo. That is the overt act
 1741 that it did, it entered into a ten-year contract with an escalation clause paying International more than it previously paid this tired family that caused them to run down, it paid it more because with this tired family it had no arrangement that nobody else could get printing done or there wouldn't be any competition in the business; but with Greater Buffalo it had the arrangement, it had an agreement, it had an agreement that there wouldn't be any other printing done for any other syndicate, that there wouldn't be any competition between Greater Buffalo and King. Under those circumstances it offered to pay International more money than it had been paying the old, tired family. Furthermore, it provided for escalation clauses in the contract so that there would be periodic increases in price over the ten-year period of time.

This chart shows—represents International's business. What did International consist of, what was the stock worth?
 1742 It was represented by the physical assets, and we have no evidence of what they were worth, but the bulk of it was represented by the profit on \$8,483,000 worth of business that King was giving International. If King cancelled its contract under that six months' notice, and Greater Buffalo believed that that contract was going to expire in July of 1955, if King didn't renew that contract, Greater Buffalo was buying stock in a company that had no business, no accounts, zero business, just physical assets—

The COURT: Let me ask you this. King is dealing—and I wish I hadn't used the term, I don't want to adopt it as an ism in this case, the tired family—they were dealing with this organization in Scranton—

Mr. BERNSTEIN: In Wilkes Barre.

The COURT: International?

Mr. BERNSTEIN: Wilkes Barre.

1743 The COURT: Well, anyway, you have a man named Koessler who apparently makes an excellent mouse trap. How about this for an explanation of all this? That after all, King is not in the printing business, it wants its printing done, there is an opportunity in the wind to get an excellent printer named Koessler, and their former—and I regret this—tired printer to amalgamate and turn out their product and sell it somewhere. Tell me about that. I mean, maybe nobody is interested, but I am. I am talking about this; there's a place called Wilkes Barre in which the ownership is worn out, and King has been dealing with them for their business; and Koessler is coming up because he does well. Now, King, I take it, is not interested at all in printing—

Mr. BERNSTEIN: Not completely, your Honor, the Government—

1744 The COURT: Assume that for the moment; they are middlemen, selling a product, and suddenly there comes competition from Buffalo in the form of Greater Buffalo Press. Now, Greater Buffalo Press and Wilkes Barre join up in an efficient operation to turn out the requirements of King. I want to hear the other side of the coin.

Mr. BERNSTEIN: The other side of the coin is this, your Honor. This group of other color printers are competing for the business of newspapers or they can get syndicates, to compete for the business of syndicates, that is—

The COURT: These other color printers that I have seen in here are remote, far away, and the only recall I have is a gentleman from the south, kind of a big man, and this fellow was somebody who left International—

Mr. BERNSTEIN: Hornady.

Mr. RAICHLER: Left King.

The COURT: You talk about the southern printing plant, their stature is kind of nebulous with me.

1745 Mr. BERNSTEIN: I was not talking about the Southern Color Plant, there is a plant, Eastern, and one in Connecticut, there are other color printers.

The COURT: Their stature to do the job is—

Mr. BERNSTEIN: The point is this, your Honor, that we are talking about King who started in this business of selling color supplements. King was the one who started this business, King

was the one selling to the newspapers, and King suddenly found competition with Greater Buffalo, and this is lawful and natural and to be encouraged. Now—

The COURT: Wait a minute, put it right in focus. You claim your case really is King being confounded by International—or by Greater Buffalo Press, head to head, keenly competitive, made a deal. You are not really saying that these little fellows in the wilderness had much to do with it; you say because King and Greater Buffalo Press washed each other out, so to speak,

as competitive factors, caused a violation?

1746 Mr. BERNSTEIN: That is exactly the point.

The COURT: These little fellows down here, yapping at the heels, don't amount to—

Mr. BERNSTEIN: I'm not talking about them. I am talking about the elimination of competition between King and Greater Buffalo, and there is nothing unlawful for King, while it has this contract with International or as its contract is about to expire, to go to Greater Buffalo Press and say, "Look, my contract with International is expiring, what will you do to print for me instead of International", nothing unlawful in that. The illegality comes in when he said to Greater Buffalo, "I'll give you my printing business only if you don't print for anybody else, only if you don't compete with me." It is illegal for Greater Buffalo to say to King, "I'll be your printer if you agree not to have your printing done anywhere else, just have all your

printing done with me," that is what makes it illegal
 1747 the dual role of customer-competitor, that causes the illegality here. On the face, as your Honor said, on the surface, there is nothing illegal about the owners of International, for whatever reasons, desiring to sell out. There is nothing illegal for a color printer to buy it. Section 7 of the Clayton Act prohibited Greater Buffalo from buying it. Somebody else could have bought it, but not Greater Buffalo. Now supposing Greater Buffalo didn't buy it, couldn't buy it because of the prohibition of the law, Section 7 of the Clayton Act; what would King have to do? King would have to say "If the Govines are going to get out, either I have to sweeten the pot or I have to get out of the business or I'm not going to compete with Greater Buffalo." There is no gun at the head of King that they must stay in business, but they can't have their cake and eat it, they can't have it both ways. They
 1718 can't say that "I'm going to stay in business and derive profit out of the printing end of the business, and I am

going to get my competitor to be my printer, and I am going to get him to be my printer by preventing him from doing business for any one of my other competitors, I'm going to be the only one to get advantage of this efficient operation and his "better mousetrap", that is where the illegality comes in, your Honor. So the illegality comes in when King helps this along by making a contract with International for a ten year period of time, sweetens the pot, agrees to pay more over the years, but only after he has an agreement from Koessler that Koessler won't print for anyone else. That is where the illegality comes in.

Now, we now turn to NEA's participation in the transaction.

Mr. RAICHLE: I'm sorry, I couldn't hear that; participation in what?

1748 Mr. BERNSTEIN: In the—I said transaction, I meant conspiracy, excuse me.

What was NEA's picture while all this was going on? NEA was competing with King and Greater Buffalo for the newspapers that didn't print their own, and they had their printing done by their own subsidiary, Buffalo Color Press—

Mr. STEVENS: Would you mind saying they had some of its printing done? Your brief says that and that is the fact.

Mr. BERNSTEIN: NEA had printing done by Buffalo Color Press, it also had printing done by other color printers. NEA was a subsidiary of Scripps, the Scripps Newspapers, and Scripps, like King, a division of Hearst, Scripps and Hearst were in the business primarily of publishing newspapers and printing newspapers; Hearst used a division, King, to sell the features and the printing, whereas Scripps used a subsidiary,

NEA, and the subsidiary, in turn, had another subsidiary, Buffalo Color Press, that printed for NEA; NEA also had printing done by other color printers; NEA had some printing done by Greater Buffalo. But NEA was a competitor of Greater Buffalo and was a competitor of King. NEA was in this dual competitive customer relationship with Greater Buffalo for some newspapers. Now, NEA took—

The COURT: Excuse me, what newspapers?

Mr. BERNSTEIN: What newspapers?

The COURT: Where were the newspapers?

Mr. BERNSTEIN: NEA's newspapers were located throughout, all over, that they were in competition for. They had some

in the south, they had some in all locations. The larger newspapers, the larger ones, some it had printed by Greater Buffalo.

The COURT: You said NEA, an interstate organization of some magnitude, had some of its printing done by—I think you called it Buffalo Color Press?

1751 Mr. BERNSTEIN: Yes.

The COURT: I never heard of that. I heard of Greater Buffalo Press. What was that?

Mr. BERNSTEIN: Buffalo Color Press was a printing plant, it printed—the record doesn't show whether Buffalo Color Press printed for newspapers other than those owned or affiliated with—

The COURT: How big a thing was that? I never heard of Buffalo Color Press.

Mr. BERNSTEIN: It accounted for approximately three percent—it printed approximately three percent of all the supplements that were purchased by newspapers that didn't print its own.

Mr. RAICHLE: It sold for \$25,000.

The COURT: That had nothing to do with Koessler? He bought that eventually?

Mr. BERNSTEIN: Yes, he bought the assets of it.

The COURT: I say, that had nothing to do with Koessler at the time it was producing for NEA?

Mr. BERNSTEIN: It did not. The name is confusing, they both have the name Buffalo in it. Greater Buffalo is 1752 Koessler's operation, Buffalo Color Press is NEA's operation.

The COURT: You see, Mr. Stevens said, and I think properly, it did part of the printing. I don't know how big Buffalo Color Press was at one time, I have the notion it was fractional in supplying the needs of NEA.

Mr. BERNSTEIN: Correct, that is correct, because NEA was having it done by other printers, not Greater Buffalo. It had a minimum amount of printing done by Greater Buffalo. It was using these others; World Color in St. Louis, Acme on the west coast; it was using those other color printers. NEA was also interested in the business in the—

The COURT: Don't put that up yet, I want to talk more about the other chart. You say NEA had lots of printing done by other color print places around the country. I don't understand why

1753 Buffalo Color Press entered into it if it's a fractional amount of NEA's requirements.

Mr. BERNSTEIN: I will try to explain. Because the point is, the main point of how Buffalo Color Press enters into it is that NEA makes an arrangement with Greater Buffalo and the sale of the assets of Buffalo Color Press happens to be involved. We are not interested in that. It is the terms of the arrangement that we are interested in, that is what I am coming to.

NEA was also interested in southern business, and it believed that Greater Buffalo was going to open up a plant in Lufkin, it believed this in 1954 at about the time that Nicht testified that he had this arrangement. The Government does not contend that NEA knew all of the conversations that Nicht had with Koessler or the substance or the terms of them. The Government contends that NEA did know, did believe—did believe

1754 Greater Buffalo was going to open up a plant in Lufkin, Texas. It also believed that Greater Buffalo needed an assured volume in that plant before it could open it up, it had to have a guarantee of a certain number of runs, it believed otherwise it wouldn't be able to open that plant. It also believed that King was going to open up the plant in Sylacauga, it believed that. It proposed to compete for the business in that area through World Color, which was another color printer in St. Louis, Missouri. The documents in evidence against NEA shows that it believed that it could successfully compete for this business through NEA.

Now, along about March of 1954 NEA gets word from one of its associates in the south who reports that he spoke to Koessler, it gets word that King is going to transfer runs to Lufkin. Now, at that point of time this must be quite unnatural. What would happen if we got word today that Macy's and Gimbels were

1755 seeking to open competing department stores in a shopping center and that Macy's controlled all the sites in the shopping center, and then Macy's were going to permit Gimbel to open there. Something seems suspicious, they don't know what, or else the rumor isn't true, or else it isn't going to happen. So that it heard that—let's for the moment say it hadn't formed any definite conclusions—it still proposes to compete through World Color. Then it learns that Greater Buffalo acquired International and now it knows that Greater Buffalo has its own printing plant in Lufkin, it knows it now has International and the opportunity to print down at Sylacauga. Now, what is its state of mind, what is its knowledge at

this point, what does it believe then? This is a highly unusual situation. It knew that King had most of the business in the south, it knew that King and Greater Buffalo were the biggest

1756 competitors, it knew that Greater Buffalo's acquisition of International eliminated that competition between

Greater Buffalo and King because normal business prudence would have said they would have said—they would have concluded, as normal common sense, that King, who for all of these years had all of its printing done by International and was competing with Greater Buffalo, would never permit Greater Buffalo to make that acquisition unless it had some arrangement. Now, let's say at that point it is just suspicion, it is not confirmed yet. Now, what does it do? Now we come to Buffalo Color Press and that answers your question, what does it do. It sends a letter of congratulations to Koessler, it congratulates him on now being the largest color printer; it knows now that it dominates the printing of the industry because it

has the combined business of King and Greater Buffalo, 1757 and so what does it do then; it liquidates its plant and it transfers whatever business it has—it was of some volume—it transfers all of that business to Greater Buffalo and again the terms of that transfer are very important. NEA—

The COURT: You said transfer its assets—

Mr. BERNSTEIN: Sold them, sold the physical plant. As you have said before, your Honor, it is insignificant, we make no—we have no concern about the physical assets, the \$25,000 figure or whatever the figure was that counsel mentioned before. From the Government's standpoint it is insignificant, we are not interested in that.

The COURT: But you enmesh NEA in a conspiracy because of that?

Mr. BERNSTEIN: Because of what I am going to tell you.

The COURT: Gentlemen, I am going to have to recess. I had planned—I find this very interesting, but I didn't realize it would go on so long—I scheduled a series of pretrials 1758 in seamen's cases at three. I must, in fairness to the lawyers, tell them that this is going to have to go on, they will have to do the best they can. Excuse me for about five minutes.

(Thereupon the court was in recess at 3:00 p.m.)

(Proceedings resumed pursuant to recess, commencing at 3:05 p.m.)

Mr. BERNSTEIN: Just before the recess, Your Honor, we were talking about NEA's liquidation of its plant, and it made a contract with Greater Buffalo, two contracts, but the effect or the substance of that contract was that all of the newspapers that were then being—strike that out—that all of the supplements then being sold to newspapers by NEA, which had been printed at Buffalo Color Press, were in effect transferred 1759 to Greater Buffalo, and those newspapers are identified on P-27. At the back the names of the newspapers are listed, and on appendix—

The COURT: Tell me how big is NEA? I'm not familiar with that. These are all small little cities, I take it, how big is it otherwise? I mean—

Mr. STEVENS: You don't claim that is in evidence?

Mr. BERNSTEIN: The record doesn't have any figures on the sales of NEA.

The COURT: I am trying to get NEA an image. ADA Evening News or Artisia, New Mexico, Daily Press, Carlsbad, New Mexico, not to decry those things, I want to know how big NEA is.

Mr. BERNSTEIN: They did about a million and a half dollars' worth of business.

The COURT: You mean per annum?

Mr. BERNSTEIN: Yes.

The COURT: All right.

Mr. BERNSTEIN: In the sale of printing, is that it?

Mr. FELDMAN: Both.

Mr. STEVENS: And you are willing to concede that there is a dispute as to whether that is in evidence?

1760 Mr. BERNSTEIN: There are no—

The COURT: I am trying to get, Mr. Stevens, an idea if NEA is anything like Hearst in the field.

Mr. STEVENS: No, no.

Mr. BERNSTEIN: Nonetheless, it transferred this business to Greater Buffalo under an arrangement whereby the contract provided that the price which Greater Buffalo would print for those newspapers, the price that it would charge NEA for printing for those newspapers—I will state that again—the contract provided the price that Greater Buffalo would charge NEA for printing for the newspapers and, in addition to that price, NEA was to be remunerated so much for each supplement that

was printed. There was a second contract which provided that for any new business that NEA brought in Greater Buffalo would print that new business at its regular contract rates that

1761 it charges anybody else and it would give NEA a remu-
neration on that new business.

Now, NEA contends that this is no more than a usual commission arrangement, a sales commission arrangement, no more than a liquidation of a plant, what is wrong with that, the plant wasn't making money, we can liquidate too. Again, we get into the dual role of customer-competitor. NEA had a perfect right to liquidate the plant if it didn't want to print any more. It had the right to go to some other color printer who, at that point, was not the dominant printer in the industry and did not have sixty-four percent of the business. It could go to that other printer and say, 'I'm going to turn these accounts over to you; as long as you print for these accounts I want a kick-back or a commission', but when it turns that business over to the dominant printer under an arrangement that no matter who is the seller, whether Greater Buffalo sells,

whether King sells, whether NEA sells to that news-
1762 paper, if it is printed by Greater Buffalo, NEA is going to get a kickback on it. The euphemistic term is sales commission, but it is not a sales commission if King gets the business, it is not a sales commission if Greater Buffalo gets the business. As long as it is printed by Greater Buffalo in per-
petuity NEA is to receive a kick-back.

The COURT: You said that NEA could go to anyone and get a kick-back. What is this kick-back, what are you talking about?

Mr. RAICHLE: It is an unpleasant term for commission.

The COURT: A discount?

Mr. BERNSTEIN: It is something more than that.

The COURT: No, I want to know; you say a kick-back; to me that has an odious connotation.

Mr. BERNSTEIN: Yes. It means—it is odious for this reason—

The COURT: You said they could go anywhere and get a kick-back; is that the ordinary thing?

1763 Mr. BERNSTEIN: No, it isn't ordinary. Probably they wouldn't get it anywhere. They got it only from Greater

Buffalo. The reason for it was Greater Buffalo's peculiar position in the industry.

The COURT: Was it a discount or a kick-back?

Mr. BERNSTEIN: It is a kick-back for this reason—

The COURT: I don't understand that, frankly, what is a kick-back? I want somebody to print my color supplements and I go to a certain person and ask him to print them; and they say they will give me a discount. Now, what is a kick-back?

Mr. BERNSTEIN: If I go to the same printer and I'm a competitor of you, they have to give me the same discount, otherwise they are violating the law. They are not permitted to discriminate in price among competitors, they have to charge them the same price. So NEA can't be charged a different price for printing for the newspapers, that is the whole point.

1764 NEA's contract with Greater Buffalo is that Greater Buffalo will charge the newspapers its regular contract price. NEA is going to charge the newspapers the same price it charges any other newspapers. NEA is going to—excuse me—Greater Buffalo is going to charge NEA, as a syndicate, a certain price. NEA, being a syndicate, cannot be charged more or less than any competing syndicate, Greater Buffalo has to charge them the same price, but Greater Buffalo provides with NEA "that regardless of how cheap I sell you the product, as long as I am going to print that, even if King gets the business, I am going to remunerate you"; I say that is a kick-back. It is a profit over and above something that he is normally entitled to in the normal business arrangement.

Now, NEA says that if Buffalo Color Press wanted to liquidate its plant it was free to sell it to somebody under

1765 a contract that the purchaser would not compete, that

NEA would not compete with the purchaser for a limited period of time. NEA tries to assert that here, because Buffalo Color Press is selling its business to Greater Buffalo and says, "As long as you are going to print I want to be remunerated for it, it is nothing more than a sales commission." What is the anti-competitive effect of that? Greater Buffalo, when it goes to quote a price to some other syndicate for the particular newspaper that had once been NEA's customer, would have to charge it the same price by law. That means NEA, in seeking that business, has that advantage over the other syndicate because he is getting that discount that

the other syndicate is not getting. He has got that built in perpetuity because of his deal when he transferred the account originally. That is illegal, he can't do that. That is the illegal part of the arrangement. The Government—

1766 Mr. STEVENS: May I ask, do you claim there is any evidence on that subject?

Mr. BERNSTEIN: Yes, the evidence is P-28 and P-27. The evidence is P-27 and P-28, it is contained in the agreement.

The COURT: Pass that up.

Mr. BERNSTEIN: It is contained in the agreements themselves. I pass up P-27 to the Court and P-28.

The COURT: Give me the paragraph.

Mr. BERNSTEIN: Yes, your Honor, Paragraph 4 of P-27, page 2, says: "You agree to do supplement printing on order from any or all of the named customers at your established schedule of rates," and then the customers are set out in the appendices to this contract, and then page 3, paragraph—

The COURT: I am looking at P-27, you're looking at P-28?

Mr. BERNSTEIN: I am looking at P-27, your Honor.

The COURT: Paragraph 4?

Mr. BERNSTEIN: P-27, Paragraph 4, page 2, it says: "You agree to do supplement printing on order from any or 1767 all of the named customers at your established schedule of rates", then subject to certain exceptions. Then page 3, it sets forth what the established rate is in paragraph 4. Then on page 5, paragraph 6, it says: "In consideration of the supplement printing turned over to you under this agreement, you agree that you will pay us or our nominee an amount to be determined and paid as follows: six and one-quarter cents multiplied by the number of pages." Sub-paragraph (c) says there will be furnished a statement monthly as to how much work you have done; and then on page 6, paragraph 8, it says: "This agreement shall continue in effect for ten years from the closing date and as long thereafter as your company or any successor, assign, affiliated or subsidiary company or any company in which either Mr. J. W. Koessler or Mr. Kenneth Koessler is associated or has a stock interest, continues 1768 to do supplement printing in the United States of America."

Mr. RAICHLE: Excuse me for interrupting, we are entitled to know; where do you claim it says that business other than that turned over? You are talking about if we went out to the newspaper and got the business.

Mr. BERNSTEIN: On P-28, to answer Mr. Raichle's question; P-28 refers to new customers, it refers to customers that NEA may subsequently bring in, customers not then on NEA's books at that time. It is somewhat the same, but then we turn to—excuse me—paragraph 2, page 1: "You agree that you will do supplement printing for the new customers at your established schedule of rates," and then there is reference to the rates, and then we go to page 3, paragraph 4: "In consideration of the new customers we secure for you and of the supplement printing you may do for those new customers, you agree 1769 that you will pay us"—now we are talking about printing, your Honor.

The COURT: Wait a minute, page 4?

Mr. BERNSTEIN: Page 3, your Honor, paragraph 4.

Mr. RAICHLE: "New customers we secure for you."

Mr. BERNSTEIN: Excuse me, Mr. Raichle, you will have an opportunity to respond. I cannot proceed orderly if I am interrupted. Paragraph 4 says: "In consideration of the new customers we secure for you—" —and note the conjunctive—"and of the supplement printing you may do for those new customers, you agree that you will pay us an amount to be determined as follows"—and then it is the same basis, the six and one-quarter cents. On page 4, sub-paragraph (c): "You agree that each month you will furnish us a statement in such reasonable detail as we may request, showing the work you have delivered to new customers during—" that means work

1770 that has been printed for the new customers, regardless of whether the business was gotten by King or anybody else—"during the next preceding month. With each such statement, you agree to pay us or our nominee the amount to which we are entitled—" and then it provides that this continues in perpetuity.

Now, the full effect of this agreement was that whatever business was involved, a million and a half, whatever the dollar amount of that business, in effect, the competition between Greater Buffalo and NEA for that business was reduced or restricted to the amount of this additional remuneration because Greater Buffalo would say, "Well, we are doing the printing anyway, we are getting the printing, we have to give NEA a kick-back on it, if we get the business from the newspapers ourselves we will make the additional profit." To that extent, there was opportunity for competition, but, nonetheless, their

incentive was reduced by their agreement with NEA
 1771 that they would give them the kick-back.

The Government is not relying only on that, the Government is relying on P-33—exhibits in evidence against NEA, P-33, P-32 and P-34, which show that Greater Buffalo and NEA had an understanding or an agreement that they would not compete for each other's customers unless they could discuss it in advance and arranged it in advance. P-32 is a document dated December 5, 1956, which Koessler writes to NEA, and he says, "We will discuss with you the accounts we consider to be our private preserve", implying that NEA's customers are its customers, and Greater Buffalo's customers are its. Now, if there was any doubt of NEA's knowledge that there had been something anti-competitive—

The COURT: You mean before they got in?

Mr. BERNSTEIN: I say, if there was any doubt—

The COURT: I said, before they got into the arrangement?
 1772

Mr. BERNSTEIN: If there was any doubt at the time they made this arrangement with Greater Buffalo, if there was any doubt in their minds there had been an anti-competitive arrangement between King and Greater Buffalo that permitted Greater Buffalo to acquire International, that doubt must have been dispelled when in the fall of 1955, a few months after Greater Buffalo had acquired International, Koessler invited Nicht to meet with NEA's representatives. They met in the Hotel Beverly, according to Nicht's testimony, and according to Nicht's testimony they agreed that they would stop bothering each other, or not compete for each other's customers. Now, at that point of time, when NEA made that agreement with King not to compete for its customers, having previously made an arrangement with Greater Buffalo not to compete with it

for its customers, at that period of time, knowing that
 1773 competition between King and Greater Buffalo was eliminated by the acquisition of the Sylacauga and Lufkin plants, and the very contract between NEA and Greater Buffalo that Your Honor has just read, P-27, made provision that "the printing will be done at Sylacauga and Lufkin plants which you now have under construction." The plants were not open yet, it wasn't opened until 1958, Lufkin. Sylacauga didn't open until 1963. But the contract, P-27, provided that the printing would be done for those newspapers in either Syl-

cauga or Lufkin, or whichever plant it was to be done cheap. At that time NEA knew that the competition between King and Greater Buffalo for Lufkin and Sylacauga had been eliminated. When it then agreed with King not to compete with it for its customers, in the eyes of the law the legal effect of that was that it joined the existing conspiracy between King and

Greater Buffalo not to compete for each others' customers. It joined that and its purpose was clear. Even though it counted for an insignificant part of the printing business, regardless, it turned that printing business over to the dominant printer, added to its domination. So it then intended that Greater Buffalo dominate the printing and that NEA, King and Greater Buffalo share in the sale of the color supplements. In other words, if you can't lick them, join them.

Now, one of the defendants—

The COURT: Let me ask you this, Mr. Bernstein, as an old prosecutor; weren't you looking for a witness more than a defendant? NEA; weren't you looking more for a witness than a defendant?

Mr. BERNSTEIN: They could be both, your Honor.

The COURT: I say, wasn't the Anti-Trust Department looking more for a witness than a defendant in trifling with NEA; or is that too much to ask?

Mr. BERNSTEIN: I will answer it this way, your Honor. I want to invite the Court's attention to the fact that 1775 this case—

The COURT: I will decide this on the merits. Weren't you actually joining NEA in the hope of having a witness?

Mr. BERNSTEIN: No, your Honor. The point is this; we have conduct over a period of 1954 through 1960 that has to be looked at. When we look at the conduct we find several violations. An important violation that we found was a tie-in by NEA and King, that was an important part of the violation, and Greater Buffalo, as a printer, relying on the fact that the newspapers must have a license, the Government realized it has to attack that evil as well. That is still in the case, that will be attacked.

The COURT: I know you do the best you can, and I have been through this myself with cases. But I say, it seems to me NEA is a trifling thing in this picture.

Mr. BERNSTEIN: No question about it, and—

The COURT: I am not criticizing your zeal.

1776 Mr. BERNSTEIN: It is not zeal for zeal's sake; NEA has to be made a defendant in this case because, as the defendants point out several times in their briefs, this is not a criminal case for punishment, this is a case for equitable relief. Because of the procedures we have put the relief part of the question a little off until culpability is determined. The Government recognizes that it bears the burden of demonstrating to the Court that now, in 1966—forget what happened in 1954—what can we do to cure this.

The COURT: We have had a big afternoon and we are going to have a bigger one; why did King get out, tell us that?

Mr. BERNSTEIN: Why did King get out of the case?

The COURT: Tell us what you had in mind with King before they got out with the consent decree.

Mr. BERNSTEIN: The Government hasn't let King out of the case at all.

1777 The COURT: They are out of my case.

Mr. BERNSTEIN: No, they are in this case for the purposes of relief. They have the opportunity—

The COURT: Look, you know what I'm talking about. King is not a defendant in this case.

Mr. BERNSTEIN: Oh, you mean why did the Government permit a failure of adjudication of culpability on the part of King. The sole reason for that, your Honor, was that because this is a case for relief there is no relief necessary as against King insofar as the conspiracy to monopolize case. As far as that aspect is concerned, Greater Buffalo is the one against whom the Government needs the most relief, Greater Buffalo is the one against whom it must establish its evidence. When King came to the Government and said, "We will give you whatever you want, you lay out the provisions of the decree, we will give it

1778 to you, how can you put us to the burden and expense of going to trial if you do that"; the Government felt it would be inequitable, an improper position to insist upon its remaining as a defendant in the trial when it did not need an adjudication of its participation in the conspiracy to monopolize in order to get the relief which the Government has already received.

The COURT: What you are saying is that Walter Koessler of the Greater Buffalo Press is the prime mover?

Mr. BERNSTEIN: No, I would say that Walter Koessler of Greater Buffalo Press and Nicht, King, were the two prime movers, yes, they are equal.

The COURT: Nicht is long ago and far away. Look, what you are saying is that the target is Greater Buffalo Press.

Mr. BERNSTEIN: Greater Buffalo and—yes, that is the principal target, as far as correcting the conspiracy to monopolize, yes.

The COURT: You don't claim that King wasn't in there up to their ears?

1779 Mr. BERNSTEIN: It certainly was, it certainly was.

The COURT: But you let them out?

Mr. BERNSTEIN: There is no practical purpose in getting an adjudication that they conspired to monopolize. If this Court finds that Greater Buffalo conspired to monopolize with King, and there is an adjudication of that fact, you don't need King in the case to adjudicate that. Greater Buffalo cannot conspire with itself, it has to conspire with someone, and this Court will then have the adjudication that Greater Buffalo has conspired with King.

The COURT: I could never understand why King went out of this case.

Mr. BERNSTEIN: Well, I can explain why King wanted to get out of the case.

The COURT: I am sure Walter Koessler would like to get out of this case, too. I could never understand why King went out.

1780 Mr. BERNSTEIN: Koessler couldn't get out of this case voluntarily with the Government's consent unless he agreed to the relief the Government asked for. King did that. The Government isn't here for the purpose of serving—

The COURT: I am not criticizing you, Mr. Bernstein. I know you as a man of tremendous integrity. I mean that right from the heart. Do you remember when we first started this case, there was a mystery about it. I will never forget the day I heard the case, the opening day, there were certain positions taken by the Government I never understood yet, and they changed like the twilight changes, and I never understood that. We went on with our affairs. We had Senator Sparkman having his nose in the picture from Alabama, for whatever political reasons he had, and I never understood that.

Mr. BERNSTEIN: May I try to explain?

The COURT: No. I am telling you that this case has 1781 been cloaked with peculiar overtones. There is no overtone now, I know you are here presenting your case well and ably, as is your colleague. Of course, the power of the press has always been important. I could never understand—and you may say by now you should, I still don't. Anyway, I could never understand why Hearst went out with General Brownell as the attorney who is here, and then we have the present situation. It's all right with me, but I do not understand it at all.

Mr. BERNSTEIN: Well, I would like—

The COURT: Maybe I'm thick, as we say, in the wood. I often wondered.

Mr. BERNSTEIN: I would like the opportunity of explaining. If your Honor wants to hear that now, I'll be glad to do it, or I will defer that to some other time.

The COURT: I think that it is better you defer it.

Mr. BERNSTEIN: Right. I would like to proceed to—

The COURT: Would you like to explain that, the 1782 moves that went on from the time I first got this case?

Mr. BERNSTEIN: Yes, I will be happy to.

The COURT: Do you think it meritorious?

Mr. BERNSTEIN: I think that it would clear up some doubts and—

The COURT: Go ahead; Senator Sparkman from Sylacauga.

Mr. BERNSTEIN: When the complaint in this case was made it made the same allegations that has been elaborated on during this trial. At the time the complaint was filed Sylacauga, Alabama had not yet been opened, the plant at Sylacauga, Alabama had not been opened, and the plant at Sylacauga, Alabama was built by Greater Buffalo through a subsidiary with funds that had been contributed by the people in Sylacauga as a development. When the Government received information that a printing press and presses were being removed from

International at Wilkes Barre and brought into Sylacauga, Alabama, the Government believed it was im-

portant at that time, that it was essential at that time to get an immediate adjudication of what we are seeking now, to prevent the situation from deteriorating and getting any worse. Therefore, it applied to your Honor for a preliminary injunction that would prohibit the removal of any assets from the plant at Wilkes Barre, Pennsylvania and prohibits the

transfer of any runs from International at Wilkes Barre to the Greater Buffalo plant at Dunkirk. This was submitted to your Honor on the basis of evidence and documents, much the same evidence that has been presented here—

The COURT: I know about that. I finally opened the plant. I'm talking about why Senator Sparkman was interested in this case from scratch.

Mr. BERNSTEIN: Senator Sparkman made representations to the Department of Justice that the continued closure or the prohibition of the Sylacauga plant from opening when 1784 it had the presses in it ready to go, was depriving the people in Sylacauga of the opportunity to work there and was depriving the people in Sylacauga who had made a financial investment in their plant. It was—

The COURT: This doesn't go to the merits. I wanted to know. I often wondered. That has nothing to do with the merits, I just wanted to know. All right.

Mr. BERNSTEIN: May I add this, your Honor? In view of all that, it is the purpose of the Government at this point to get a determination of culpability at this point, and then present to your Honor considerations, taking all of the equities in the case, the time that elapsed, who is in it, who is now a defendant, who is not a defendant, to determine what relief should be in order. The Government's legal position has to be this, its legal position has to be that this is an action for equitable relief and this conspiracy has not ended, and that brings me up to 1785 the principal defense in this case.

It is the defendant's, Greater Buffalo, contention that the conspiracy could not be continued because at that hearing, that your Honor referred to, for the preliminary injunction the Government contended that it needed the injunction to protect King, to protect Hearst, and therefore there must have been competition between Greater Buffalo and King, and since there is competition now the conspiracy not to compete is over and therefore there is no basis for equitable relief, the Government has no case. They point to the fact that in December 1955 Greater Buffalo took business away from King at the very same time that the Government contends there was this arrangement to keep each other's customers. So says Greater Buffalo, "What kind of conspiracy do you have here?"

- In the first place, in January of 1956—there are exhibits in evidence, P-40 and P-17, January, 1956, in which
- 1786 Koessler writes to Nicht and reiterates his understanding that "we are each to keep each other's accounts." This is a few months after Koessler took some business away from Nicht. There is no evidence as to what went on, what discussions went on between Nicht and Koessler in the interim. The fact remains that Koessler found it necessary to reconfirm to Nicht that their understanding was that "we are each to keep our own business, each to keep the customer each other has." Furthermore, we recall Nicht's testimony that he had been promised fifty cents remuneration for all business put in Lufkin when it opened even if Greater Buffalo had that business. And finally, there is evidence in the record that after 1955, when Greater Buffalo took these accounts away from King, there were efforts made by Greater Buffalo to allocate customers with King in NEA's behalf and in its own behalf. Therefore,
- 1787 the Government contends what this argument overlooks is that an important part of the conspiracy, the important part of the intent of both Greater Buffalo and King, was that Greater Buffalo was to monopolize the printing of all of the printing done for color comic printers, and that is still continuing, because by this illegal arrangement, whether it stopped or not, by that illegal arrangement Greater Buffalo was in a position to acquire International. It would not have been in that position to acquire International but for that arrangement. King would never have permitted it to get into that position. Then Koessler, once it was in that position, then turned around and the tide was turned. Up until that time King had controlled it, had the features, it was tying in the features, and Greater Buffalo relied on the fact that the newspapers had to have features in order to do business. But
- 1788 once Koessler lulled King into a false sense of security with these agreements that it would print for nobody else, once he had them he acquired International, then he turned around and he said, "I'm going to bring NEA into this picture, you two fellows get along and not compete." Just as these defendants had the dual role of customer-competitor, they also have the dual role of victim-culprit. Greater Buffalo is the victim to the extent NEA and King can tie in. King, especially, is the victim to the extent that as a result of its illegal conduct Greater Buffalo now is in a position where it dominates the

printing. You have to come into equity with clean hands. If King was before this court it would be thrown out. King isn't before this court. The public interest must be served, the Government is here to protect the public interest and to find out, in light of these facts, did this constitute a ¹⁷⁸⁹ piracy to monopolize and if it did, then what can be done about it. The what can be done about it will be taken up at a later time.

At the moment I have nothing further to present affirmatively except with respect to particular documents. If your Honor would prefer that I defer comments on particular documents until after you have heard the defendants, I will be glad to do that.

The COURT: I have gone far away with you in discussing collateral matters. I think you know me well enough, and I think I know you well enough. I think that has been enlightening to me. We have taken a lot of time here, I have asked a lot of questions, some of which are not pertinent to the issue. But I think I should know about those things. I do not consider this a simple question. You have answered them well.

Mr. BERNSTEIN: Thank you.

The COURT: Had you finished, Mr. Bernstein?

Mr. BERNSTEIN: Yes, your Honor. The only thing ¹⁷⁹⁰ that remains—I finished my argument—the only thing is to specify which documents are under advisement, which documents are for NEA only. If the Court permits, I would like to do that later, after we hear from the defendants.

The COURT: All right, fine.

Mr. RAICHLE: Your Honor, until I listened to my friend this afternoon I thought I had read and heard most everything that could be said on the subject of conspiracies. You hear about conspiracies among parents, conspiracies among salvors on occasion, and now we hear for the first time a representative of the United States Government, speaking on behalf of the Department of Justice, talking about a conspiracy between culprits and victims. If that is not enough to put this case in the strangest setting ever to be that within which any case was tried, we have the culprit consented out of the case and the victim remaining in it and, for good measure, a temporary injunction existing now, obtained for the benefit ¹⁷⁹¹ of the culprit, designed to tie the hands of the victim, and to prevent competition between the victim and the culprit, all for the benefit of the culprit.

Now, let us just do a little something in the way of review here. I preface my remarks with an observation in good humor, that I do not mind my friend coloring the exhibits for his dramatization, but I object to his coloring the facts. Like so many of his arguments, they need unraveling, and like so many of the statements made in this case, they need some correcting. Now, if your Honor will indulge me, I will not be as long as counsel found it necessary to be, but I would like to review for your Honor's benefit, and for a starting point of argument, some undisputed facts and then talk within the record concerning

the more pertinent facts and then argue our position.

1792 We are here, as I understand it, to argue before your Honor the sufficiency or the lack of it of the *prima facie* case required as a condition of the receipt in evidence of various documents which your Honor has had under consideration, and the misconception of the Government appears on the first line of their brief—it is not too important, but it is rather striking as we read it. The brief on page 1, the first sentence of the brief says: "At the conclusion of the presentation of the Government's case the Court took under advisement plaintiff's motion that all documents received against one defendant be received against all defendants as admissions of co-conspirators."

That is the very thing that cannot be done, no matter how authenticated and otherwise reliable a document might be in a

given case, not this case. It is not the matter of ad-
1793 missions which is received in any conspiracy case, it is declarations in the furtherance of the conspiracy. Admissions, indeed confessions, are never received against anyone except the one making them. That is just by way of preliminary observation of the misconception in that respect under which my friend labors.

Could we go back a minute and review this industry, the position of the defendants in the industry, and the acts and deeds, the statements of all of them. About the turn of the century King Features, by whatever name then known, a subsidiary of this huge corporate complex, Hearst, started a new industry, the printing and sale, the licensing, if you please, of colored comic features. The color comic feature business grew, became popular, widespread, greatly read, followed with interest by young and old, and as the years went by, from a very early beginning or at least a humble beginning, the in-
1794 dustry grew to sizeable proportions where these gross sales and license fees and printing were in the sums of

millions. Like any other industry, which has popular appeal and meets with success, it engenders competition. In the course of time King Features, as we shall call Hearst from time to time throughout this discussion, began to feel the effects of competition. As the years go by, we come to the year 1954; and without indulging ourselves and subjecting your Honor to all of the detail, the fact remains, and appears in the record, that some four hundred to four hundred and fifty newspapers were being printed in this country which were using color comic features on Saturdays and Sundays, mostly on Sundays. By that time Greater Buffalo, founded by a Buffalo family, fostered by its ability, acumen in the field, and a savings of an entire family used to finance it, and itself grown from humble 1795 beginnings to the point where it was printing for approximately one hundred forty or one hundred forty-three newspapers colored comic sections.

The COURT: They were successful?

Mr. RAICHLE: They were successful in the old tradition, and as their success became manifest, Mr. Nicht, whom we have referred to often, became resentful, indeed alarmed, and we find this correspondence and memorandums back and forth between Nicht and his employers as to what he was doing to meet the competition which was growing from the Greater Buffalo source.

In the meantime, Scripps Howard papers, in a smaller way, that is, smaller than Hearst, King Features, was also developing as a competitor in the field. Various other color printers were in the business, not so large, not so efficient, but in the business. Now then, Hearst, King Features, had a captive printer by the name of International Color Printing, owned by a family 1796 in Wilkes Barre by the name of Govine, and over the years had been able to dictate to this family the price at which the International company would print for Hearst. Captive, captive and oppressed, and as the price was driven down and the earnings declined and the surplus melted away, the year 1954 found International Color Printing in extremes. International Color Printing sought to sell its plant to King Features, Hearst. King Features, despite its almost unlimited financial resources, did not see fit, did not desire to make the investment of some six or seven hundred thousand dollars required to be made to effect the purchase. An alternative was presented, pay a reasonable price, a higher price for the print-

ing so that this International company could exist and this family could live. That alternative, to the greedy Hearst, was unacceptable. In that situation, Koessler, Greater Buffalo Press, learning of the opportunity, as they considered it to be, to purchase the International Color Printing, came forward after Hearst had declined and repeatedly refused the entreatments of International to sell them, after Hearst was unwilling to raise the price and pay reasonably for the printing and save the company, Greater Buffalo purchased the stock from the family. Hearst had absolutely nothing to do with the sale of the stock of International Color Printing, and if there is one fact that I want to stress it is the fact that Hearst owned no stock, controlled no stock, the family decided to sell, and all this talk claiming that Hearst had something to do with the sale of it to Greater Buffalo is outside of the record, unfair, improper and ought to be nailed as a misstatement at the early part of my argument or any consideration by your Honor of this record. There is not a scintilla of evidence that Hearst had anything to do with the sale, and the evidence is to the contrary, and six months or more after the purchase by Greater Buffalo Press of International, Greater Buffalo Press enters into a contract with Hearst. That is the first misstatement that I want corrected.

The second one is a serious one, and that is this. Counsel stood here and told your Honor, inadvertently, I am sure, and I share your Honor's view of his integrity, but his recollection does not measure up to his integrity if it is entitled to the high accolades your Honor has accorded it; and he said that in the contract between Greater Buffalo Press and Hearst that Greater Buffalo Press agreed not to print for any other syndicate. That is not so, the contract is in writing, it is here before your Honor.

If there could be a question about that, if he dares to question it, I will stop and read it or wait while he reads it—

Mr. BERNSTEIN: I question it.

Mr. RAICHLE: —checking him as he goes along—

Mr. BERNSTEIN: I question it.

Mr. RAICHLE: Wait a minute, you are through until I get through.

Now then, what is there to criticize, I ask rhetorically at that point. Koessler made an investment, Greater Buffalo made an investment which Hearst was unwilling to make. They acquired

this company, they enter into a printing agreement with Hearst for a period of ten years, to be sure. There was no agreement not to print for anybody else. Nicht sought that agreement and was unable to obtain it. Who is the culprit, who was the predator; Hearst. Who is the man who is seeking to seduce everybody else to enter into these illegal agreements; read the correspondence that is in evidence and that which cannot come into evidence and you will find the fact to be that it is
1800 always Nicht; Nicht pushing for an agreement, Nicht pushing for an exclusive agreement, Nicht pushing for a side agreement; he is the one who plays the role of Fagan here with everybody.

Now, counsel read to you some paragraphs from Exhibits P-16 and P-15. I am sure without any intention of so doing, he read as if he were reading provisions of a contract. What does each letter say? The letter, P-15, June 2, 1955, written on the letterhead of Greater Buffalo Press, signed by Mr. Koessler, to be sure, says: "These are the points discussed in New York, on which we agreed could go into a contract, between King Features Syndicate and Greater Buffalo Press." June 13th, some days later, eleven days later, he said again: "These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate and the Greater Buffalo Press." The important fact is that
1801 when they consulted counsel it was decided that no such contract could safely or, let's face it, properly be made in the light of the zeal of the Anti-Trust Division.

The COURT: Now, Mr. Raichle, where is the proof of that fact?

Mr. RAICHLE: There is a letter, something about it would be dynamite.

The COURT: I remember that letter.

Mr. RAICHLE: Now then, it might be all right for a poet like Milton to say "Not by what he does but by what he would do is a man to be exalted"; certainly a man is not condemned or to be punished in a court of law because he was induced to have a flirtation with a man named Nicht who was seeking to induce him to enter into an improper contract. So there is no agreement, there never was an agreement between Greater Buffalo and King Features that Greater Buffalo Press would not print for some other syndicate.

1802 The COURT: Pardon me, you say that all this inter-course between Nicht and others never culminated?

Mr. RAICHLE: Never culminated. Now, let me see how buttressed that statement is, how unassailable it is as a matter of positive fact. Your Honor has in mind, I can see clearly, as I think we all should have, the claim of the Government is that the essence of this conspiracy charge in the complaint in so many words, and reiterated time and again in this court, is that there was an agreement between Greater Buffalo Press and King Features not to compete with one another. Your Honor has in mind the statement made by counsel that Nicht and Koessler agreed, either in writing or discuss the matter of leaving each other pretty much alone, and all that sort of thing. I say that was never consummated, and before I marshall the evidence to show it wasn't, let me call your attention to the—

what shall I say—the minimal character of the proof
1803 offered in an effort to sustain a claim that even in an interim way or temporarily or in some isolated transaction that was done. He goes back to the year 1954; twelve years ago, twelve years ago. Let me not exaggerate, we are only in the month of January; eleven years ago; and he says there was a time when the Gannett papers decided to cease the printing of the colored comic sections for Utica and Binghamton, and that Hearst and Koessler divided it, Koessler taking Utica and Hearst taking Binghamton. Well, when you look at the document relied upon, it is a telegram of seventeen words from Koessler to Nicht, saying that he has talked to a fellow named Bittner, and Bittner wants the printing for the Binghamton papers done by International, Hearst, that he has the Utica job. It turns out that Binghamton is forty-five miles from Wilkes-Barre where International was located, and that the price which Koessler would have to pay for the
1804 transportation from Buffalo is more than the printing cost. The logic of the thing, the business dictates of the situation, if you please, were such that Hearst got the Binghamton job near Wilkes-Barre, almost in the backyard of Wilkes-Barre, Koessler got Utica. An isolated, single transaction of eleven years ago.

"Oh," they say, "It wasn't a single transaction, there was another one." We go west to something called Waterloo, Iowa.

Four hundred and fifty papers in the United States and they pick Binghamton, Utica and, last but not least, Waterloo, Iowa. I am not informed as to the circulation of the paper or the value of the printing job, but the documents in evidence if I recall correctly, show that this paper wanted, instead of the customary eight-page comic, wanted six pages and, as Nicht says in one of his letters or memorandums, in evidence, he didn't

1805 much want the job because he wasn't in a position to compete with us in printing six pages, he could compete with eight, he could not compete with six that they wanted.

Now, what are we talking about that for in a big anti-trust case, a federal case, those two incidents of eleven years ago. He points to no others.

Now, let me recall to your Honor, if I may, and point out the incongruity of the situation. The charge is that we entered into a conspiracy not to compete with Hearst. What does the record show? It shows that between 1955 or 1956 and the present time, that is, up to the time of the granting of the preliminary injunction, which I will discuss in a minute, we took away from Hearst twenty-six sizeable newspapers. That appears in evidence from the answers to an interrogatory which has been put in evidence. Indeed, the competition which 1806 they say was allayed, eliminated and wrongfully stifled and which arrangement still continues, or pursuant to an arrangement that has continued through the years and still continues, was so fixed or was so honored in the breach, the arrangement, that Hearst was facing ruin if it didn't get an injunction in its behalf which would stop that.

Your Honor, just think about this in the face of the claim here that there was an agreement not to compete, and this law suit is predicated upon that. The lawyer who makes the claim stands before your Honor in the year 1961 and says this to you: "Now, within recent times Greater Buffalo, which of course controls International, has gone out and has displaced King Features Syndicate and by displaced I mean King Features Syndicate would have an existing contract for printing for the publisher and they in turn would get publisher's printing from International. Obviously, Greater Buffalo 1807 knows and controls the price upon which International sells the color comic supplements and Greater Buffalo

can go out and instead of quoting a price to the syndicate which in turn has to make a profit, can quote the same price offered to the syndicate to a particular publisher. This has happened. The plaintiff has been informed in Texas there are more solicitations. Although Greater Buffalo has basically been the printer and King the seller for the same accounts basically, the trend has been for Greater Buffalo to take business away from King Features Syndicate." How on earth can a man reconcile his claim that he is entitled to some relief before your Honor, whatever he could conjure it to be, on the theory there is an agreement not to compete which is continuing and ought to be stopped, when he asked your Honor for an injunction to save the culprit from the devastating effect of competition so severe that he cries out against it? I know that consistency has never been one of the lamps of advocacy.

1808 There has to be some theme, there has to be some consistency with respect to the facts. I don't care how inconsistent the man wants to be in his intellectual gymnastics when he comes to applying the law or interpreting the law, but I say that the sovereign, our government represented by the Department of Justice, must have some consistency with respect to what it claims the facts to be.

Now, there is either competition between Hearst and Greater Buffalo Press or there isn't. If there is competition and it has continued through the years, that ends this claim that there is a conspiracy not to compete. If there isn't competition between the two of them, then I say that the preliminary injunction, under which Hearst now hides for protection from our competition, should be dissolved here and now, and I ask counsel to stand on his feet when I get through and tell your Honor whether he wants that injunction continued or not.

1809 Now, let me illustrate, if I may, while I am—

The COURT: Let me say, if there isn't competition I would be most surprised.

Mr. RAICHLE: He said there isn't.

The COURT: I would be most surprised. I want to hear from you on that, Mr. Bernstein.

Mr. RAICHLE: I would be glad to subside now.

The COURT: No, go ahead.

Mr. RAICHLE: The temporary injunction in its present form forbids us to take any run from Wilkes Barre to Sylacauga,

except those specifically permitted when the temporary injunction was relaxed, and that was to permit certain runs from certain states or runs from certain states. I have in mind a particular instance. There was a paper in Little Rock, 1810 Arkansas, the Little Rock Democrat or the Arkansas Democrat. That paper is presently printed, that is, the color comic supplement is presently printed in Wilkes Barre and it is a Hearst account, a King Features account. Now, you take judicial notice of the fact that Little Rock is within a couple hundred miles of Lufkin, Texas, so we don't get into Sylacauga. A couple hundred miles from Lufkin, Texas, and we are forbidden by the injunction from going to the publisher of that Little Rock paper and saying, 'We can save you this transportation charge by printing at Lufkin; take it away from Hearst and give it to us' but the injunction which he sought permits their doing that. Talk about allocation of customers, talk about leaving each other alone, talk about not competing, why, the competition was so severe they had to step in, so they say, to prevent it, and then they say there was 1811 some understanding that we were not to print for any other syndicate. I pointed out that that just isn't so. They say there was a conspiracy not to print for another syndicate. We have printed for the other syndicates from the day we were favored with their business back in '55, '56, whenever it was, to date.

The COURT: Tell me, Mr. Raichle, what you think started this. Now, I don't say that someone always starts these things in court, but it is not normally the Justice Department. Tell me what you think engendered this whole thing back some years ago. If you have an impression it would help me understand.

Mr. RAICHLE: Yes, I have an impression, and at your Honor's request I will state it.

The COURT: You may wonder why. I think in most things, including being a judge, you wonder why these things happen.

Mr. RAICHLE: I will state it.

The COURT: It helps to understand it.

Mr. RAICHLE: I will state it without fear of reprisal. 1812 Hearst prints a newspaper, we don't. Hearst prints a chain of newspapers, Hearst was better received at the Department of Justice than we were. That is all there is to it, in my opinion.

The COURT: Well, go ahead.

Mr. RAICHLE: Now, let me amplify what I said. This case started out on January 6th, 1961, with a charge that Hearst was tying the sale of features, the licensing of features to the sale of printing, in clear violation, as it was claimed, of the anti-trust laws. In the argument made to this Court in the last day of the hearing, on the trial of the merits, some few months ago, Mr. Bernstein said we were the victim of that tie-in. So that after five years of litigation his mind hadn't changed, that the tie-in was illegal and that we were victimized. What does he say? He said we used poor judgment in not going to the Department

1813 partment when we were the victim of the tie-in; we shouldn't have done business with Hearst. Well, here

we are five or six years later, the tie-in still continues, and any action on the subject is postponed until the fate of the victim is determined; and I say the welfare of the culprit, to use his words, is being better protected than the fate of the victim in that regard.

There was another consideration, in answer to your Honor's question; we have a government disposed to surrender many of its prerogatives to the labor unions; cowardice in high places. What happened? When we proposed to compete with Hearst by taking runs from Wilkes Barre to the new plant in the south, the labor unions called upon the Department of Justice. We had labor people sitting in this court room protesting against the transfer of those runs. There is something funny about

1814 this case and I agree with your Honor. It started off to put a stop to the tie-in practice of Hearst. We were the victim, so he says, and Hearst was the culprit. Now what has happened? All that is gone. Now, the claim is made, variously made the claims are, one that we compete too vigorously, unfairly, with this monster, Hearst, and the other that we have agreed and have conspired not to compete. How does a man defend himself against charges of that kind sought to be sustained by arguments of that type?

Now then, I have made notes as counsel talked—

The COURT: Let me say right here that you are right, because I remember well the labor unions' interest. In fact, I remember well receiving letters, prompted or otherwise, by wives of workers in Wilkes Barre, imploring me to act one way or another favorable to the labor situation there. I don't understand that. You say there is something about this case; this

is the most remarkable case that I have had since I
 1815 have been on the bench. I hope I can go longer, maybe
 there will be something more remarkable. I have always
 wondered about certain factors in this case, including the hue of
 the Justice Department itself when it first came in here. I had
 a definite impression one time of the position of the Depart-
 ment and had seen it change. I don't understand that. This
 has nothing to do with the facts, I don't understand the ap-
 proach. Go ahead, please.

Mr. RAICHLE: Apropos of what we are talking about, I
 wanted one or two other things to be brought to your Honor's
 recollection. There can be no substance to the claim we are
 not competing. We are competing as vigorously as the outstand-
 ing injunction will permit. I pass to one or two of the argu-
 ments made by counsel. For ready reference, I would like to go
 to page 50 of his main brief, under the heading "Con-
 1816 clusion", because here we have very much the same sort
 of argument that he made here. This must be what he
 claims he has proved by way of a *prima facie* case; it is what he
 claims. "Conclusion: (1) Excluding evidence contained in the
 documents now being taken under advisement by the Court,
 the Government has proven that prior to the acquisition of
 International, King and Greater Buffalo agreed to allocate to
 each other their respective customers." I have dwelled upon
 that subject and demonstrated, I believe, there is no substance
 to the charge, and that sentence is without basis and fact.

Next, referring to Greater Buffalo: "They also agreed to
 allocate three new accounts; one to Greater Buffalo, one to
 King, a third to Greater Buffalo with a kick-back to King." Now,
 I know it is an old technique to use words like that, kick-
 back; they have a connotation of a program. It is nothing but
 a commission. Let me explain this for a second. Hearst
 1817 and, I think to some extent, NEA felt they had de-
 veloped an industry, that we were interlopers, they had
 created the market for some of our printing, that if they hadn't
 done a general selling job, sort of like institutional advertising,
 I suppose, there wouldn't have been this market for us, and
 they come around on occasion and ask for a commission. Now,
 that isn't the commission on stuff we sold ourselves, generally
 speaking. It is a commission now and then on something where
 they think they have opened the door—I'm talking about this
 Iowa place. They go on—there isn't much more here, your

Honor—"Having made these agreements——" that is, the agreement not to compete, which I think we have blown out the window—"Greater Buffalo and King then agreed to eliminate all competition between themselves." Well, again there is the twenty-six accounts we took away, the fact that 1818 the competition was so severe they had to be protected against it. The illustrations which I have given all bear on that. "Greater Buffalo was to acquire International and become King's sole printer," that is something that Nicht sought, he wanted to be our sales agent, we wouldn't have him, we didn't have him, we printed for everybody.

Now, it's kind of a strange way of putting it, but here it is, reading from the brief: "Greater Buffalo promised that it wouldn't print for competing syndicates but would allow all new accounts to go to King and keep only the business which it already obtained. Part of the latest agreements were executed——" —I don't know what he means by that—"Greater Buffalo acquired International and King contracted for International to be its printer for ten years. However, Greater Buffalo then abrogated that portion of the agreement in 1819 which it promised not to print for King's competing syndicate." There is no such agreement, there was no such agreement. I don't think counsel should have temerity to again assert there was. It did this by contracting to print for NEA, King's leading syndicate competitor. He seems to feel or evidence a feeling in that statement that we shouldn't have printed for the competitor. Damned if you do and if you don't with some of these fellows. "After NEA arranged to eliminate competition with Greater Buffalo, it agreed under the auspices of Greater Buffalo not to compete with King." I suppose that gets back to the time Koessler introduced Nicht to Walker; and one of the most unkind things, Mr. Bernstein, that you do, you talk about any agreement between King and NEA as involving Greater Buffalo, when Nicht testified clearly and unequivocally, under your questioning, that the agreement or the discussion, the possibility was only as between King and NEA and that it didn't involve Greater Buffalo Press.

One more thing here. This is probably a little thing. Sometimes, as I say, straws show the way the wind is blowing. It says: "The immediate results of the non-competitive agreement——" I'm reading from counsel's brief "were that newspapers were deceptively lulled into believing they were getting

the benefits of competition among the three conspirators; in reality the document evidence demonstrates that the ostensible competitors were in fact not competing." Now, just imagine, the wire services had carried the details of this trial and all its pre-trial proceedings into the offices of every newspaper in the land. All that any publisher, for the last six years, has had to do to know the facts about the relationships between these various companies, in their minutest details, is to read their 1821 own papers.

Now, there is one more thing and then I am through, and that is that talk about Lufkin. Do you remember counsel said—he had one of his charts there, reminiscent of another friend of mine by the name of Landy—anyway, they say that we wouldn't have opened Lufkin save for their business, they were giving us business so that we could open the Lufkin plant. Does your Honor believe, does Mr. Bernstein really believe that Mr. Koessler, who had been able to buy International Color Printing Company only because Hearst had ground it down over the years, captured it with its business, drove down the price, ruined the company, was going to not profit by that experience and open a couple of million dollars' worth of plant in Lufkin on the basis of business from Hearst? He isn't the

Koessler they claim he is if he would do such a thing as 1822 that. He wasn't going to be captured by them, he opened it with business that he took away from them, he opened it with business that he got from others, he opened it with business that he got by fair competition.

When we get all through with it, I have left unsaid much in the way of minutia that I might have referred to and there might be things in your Honor's mind I have overlooked, but let's get back to the first principle. This is an equity case, drastic equitable relief is sought under these confusing circumstances. Drastic equity relief is usually granted, always granted, only granted to put a stop, if it is negative in character—injunctive relief, we shall say, is granted only to cure an existing, persisting wrong or injury. Here it is non-existent. I can't, for the life of me, see on what basis counsel can claim that he has made anything resembling a *prima facie* case by inde- 1823 pendent evidence justifying the admission of these disputed documents. Thank you.

The COURT: Mr. Stevens?

Mr. STEVENS: If the Court please: on behalf of NEA I cer-

tainly subscribe to the statements of Mr. Raichle, that it is difficult in the extreme to see how the Government believes that it has made a *prima facie* case in this proceeding. Speaking specifically as to NEA, the thrust of my presentation will be first that the plaintiff has wholly failed to show any knowledge in NEA of any prior existing conspiracy, even assuming that one did, in fact, exist. Secondly, to demonstrate to your Honor there was nothing in the sale of Buffalo Color Press, which I shall refer to as Color Press, which was related in any way to any conspiracy, to say nothing of the supposed pre-existing conspiracy which NEA is supposed to have joined. Thirdly, I shall

touch briefly upon the so-called "Beverly truce" and
1824 show to your Honor that such truce was a wholly temporary arrangement adhered to at most by Hearst in one or two instances, existing solely, as Mr. Raichle has properly pointed out, between NEA and Hearst, not a separate charge in the complaint in this case, and long since wholly abandoned by NEA, if indeed the proof shows that it ever adhered. Finally, I believe the proof shows and I will undertake to submit to your Honor that there is no evidence in this case admissible against NEA of the size and nature of its participation in this whole field of activity. Indeed, the statements repeatedly made today and the argument by counsel for plaintiff was that the share was insignificant.

Turning to the first point in the argument, that is, there is no proof of knowledge in NEA of any prior consisting conspiracy. I am sure that your Honor observed that even in
1825 his zealous and properly zealous efforts early in the day, counsel for plaintiff at no time said that NEA knew of the existence of the conspiracy. Indeed, at no time in this case has there been a direct charge, let alone any direct proof, that NEA had any positive knowledge of this supposed prior existing conspiracy. What has been presented to your Honor is a curious assemblage of documents which show nothing more than that NEA, a small factor in the color comic supplement business, in 1954 and 1955 was striving to find out what was developing in the business, and that it was undertaking to determine whether or not it was true, for example, that Mr. Koesler and his associates were going to put up a plant in Lufkin. The series of exhibits which refer to this subject run from 44 through 51. The first is a letter dated March 30, 1954, from

1826 Mr. Walker, then a vice president of NEA, to Eli Minton, one of the representatives of NEA in Texas. It discussed rumors which they heard as to whether or not there was going to be a plant there. Indeed, it refers to a talk which Mr. Walker had with one of the Koesslers on the subject.

Then in May there was an exchange of letters between Mr. Walker and a man, John Blake, Scripps Howard Supply Company; and another letter from Walker to Minton forwarding what the gossip was as to whether or not a plant was going to be built. In June this man, Minton, wrote back to Walker and said, well, he had talked to Jim Chambers, one of the Dallas papers, and Jim says he heard that Hearst is going to put some printing in the Lufkin plant, it is going to go forward. Then from June it dropped down to October of 1954 and there is another letter from Walker to Minton on this same subject.

There are two letters in early 1955 dealing with an effort 1827 by Mr. Walker to find out what the facts are about building a new plant in Sylacauga. Here was a little fellow in the industry striving to find out what was going on, and Mr. Walker wrote to the fellow, I believe his name was Frier-
son, who was on one of the papers in Birmingham, "What do you hear about that?" He wrote back and said, "I understand there is going to be a plant in Sylacauga."

The COURT: Excuse me. That little list I read, are those your clients?

Mr. STEVENS: Those were some, yes.

The COURT: Who are your bigger clients?

Mr. STEVENS: I think some of the bigger ones—let me take a look here.

The COURT: I mean, give me an example.

Mr. STEVENS: I think some of the large Scripps Howard papers. I'm sure the large Scripps Howard papers would be among them.

The COURT: I wanted to know. You said this man was interested in where the business was going?

Mr. STEVENS: That is right. He wanted to know 1828 where the new plants were going to be. Anybody in the color comic supplement printing business knows that freight is one of the large factors, and if there was going to be a new plant in the southeast, where Hearst was already by far the dominant factor, NEA could see if it didn't do something to protect itself, its interests down there were going to evap-

orate in the face of the new plant which Hearst might control and which could serve the other papers.

Finally, the climax in this series —

The COURT: What plant was it that Hearst might control?

Mr. STEVENS: The possible plant in Sylacauga. Back in the early days when Hearst was importuning International to put a plant down there.

The climax in that series of documents, and it is the total proof in this case which is supposed to put positive knowledge in NEA of the existence of this supposed conspiracy, there is a letter dated August 2, 1955, from Mr. Walker to Mr. Walter Koessler, congratulating him upon the acquisition of International by Greater Buffalo, and in that letter Mr. Walker said that he was surprised that he didn't know anything about it before. Now, if that isn't one of the most curious ways in which to submit to a court that there was proof positive or proof upon which a court could reasonably find the existence of knowledge of a prior existing conspiracy and, as your Honor heard Mr. Bernstein speak this morning, he said, 'We think that NEA believed this, that they believed that, and that they believed something else.' On these points, which Mr. Bernstein says he thinks NEA believed, from this piddling sequence of correspondence running from March of 1954 to mid-1955, the whole concept of our knowing about a prior existing conspiracy, which if it existed at all, your Honor, was not a conspiracy of mere civil proportions, it was a criminal conspiracy because they repeatedly talk about allocating customers, indeed they have talked about fixing prices. These are things which we were supposed to have deduced, just as they would now have you infer from these items of information that we knew a prior existing conspiracy, violative of the Sherman Act, was in process.

Now, in our briefs we have discussed these documents in detail I know the hour is late so that I won't review the documents seriatim. The fact is, your Honor, not one element in the proof of this case drives home to NEA the kind of knowledge which is absolutely foundational to the case which the Government would make against NEA, because throughout this entire proceeding, it is perfectly plain that NEA has initiated nothing. If NEA is at fault at all, it is because 1831 NEA is a joiner, even according to the Government, and what we are supposed to have joined is a prior existing conspiracy, and we certainly had to know of its existence, we

had to know of the evil intent, we had to know of the purposes of control, we had to know of the intention to dominate. Now, there are other tests which can be applied to show that we certainly did not know those facts because, your Honor, if a conspiracy existed—again, I agree with Mr. Raichle that no such conspiracy did exist—that if it existed, who do you believe was one of the prime victims of that conspiracy? It was NEA; and who said it was one of the prime objects of the conspiracy? Our friend, Nicht, and he did it in a document your Honor should read.

The COURT: Nicht is dead.

Mr. STEVENS: That is correct, but this is one thing Nicht would have trouble denying. He is writing to Mr. Koessler in August of 1955—I refer to P-25—"Situations such as this bring up again the matter of what to do about NEA. I think you and I are beginning to see eye to eye in this respect, but NEA is competition, and bad competition because they'll use anyone in the furtherance of their own interest. Consequently, I hope we can strike upon some plan which would make it possible for you to retain what NEA printing you have, but eliminate NEA in the process."

Now, that is the kind of a bedfellow we are supposed to be crawling in with.

The COURT: There is no later letter?

Mr. STEVENS: Yes.

The COURT: I don't want to hear all the letters, I remember reading them. I don't want to cut down on your argument, but I was thinking maybe there is other letters of another tenor. Go ahead.

Mr. STEVENS: Here is a letter, your Honor, which shows that even after we were supposed to have joined up that Mr. Nicht felt the same way toward us.

The COURT: He persisted?

Mr. STEVENS: He persisted. You will recall by date we were supposed to have had a ceremonial wedding along in October when we signed Exhibits 27 and 28, I think it is, but here is a letter dated January 26, 1956, plaintiff's exhibit 40, from Mr. Koessler to Mr. Nicht. Now, the background of this is that Scripps Howard have papers in Memphis, and the comic color supplement business for those papers is very good business. Nicht was urging that Mr. Koessler and Mr. Nicht cop off that for themselves. Mr. Koessler was indicating that he didn't think

that was practical. He said, "I don't think we can reasonably deny NEA the privilege of doing business with their blood relatives. The Greater Buffalo Press as the Greater Buffalo Press has been working in Memphis for the past five or six 1834 years and I know that if any change is made it will be kept in the family. If however we get in the picture as printers we will see that King is cut in for something as much as we can squeeze out of it. The alternative—"

The COURT: Skip over the last part, but whose letter is that?

Mr. STEVENS: Koessler's letter to Nicht.

The COURT: Read it.

Mr. STEVENS: "If however we get in the picture as printers we will see that King is cut in for something as much as we can squeeze out of it. The alternative would be for NEA to take the job to St. Louis which is too close for comfort."

In other words, your Honor—

The COURT: What date is that?

Mr. STEVENS: That is January 26, 1956, only two or three months after we were supposed to have joined this whole affair.

The COURT: That is before he had Mr. Raichle for his lawyer, I take it? Gentlemen, I have enjoyed this afternoon's 1835 discussion, we have kept it a little light from time to time, and I have heard serious arguments; and my remarks must be borne with just because I have been here since ten and I have to have a little indulgence once in a while. I want you to take nothing from my remarks, of course. Did you want to say any more?

Mr. STEVENS: Your Honor, I would like to touch upon the—I know that it is late—

The COURT: No, no. You see, we have had quite a day of it here since two o'clock. Suppose you emphasize your points.

Mr. STEVENS: I would emphasize briefly this, your Honor, that when pressed this afternoon for the real import of the argument that the sale of color press meant NEA's entrance into the conspiracy with Greater Buffalo, Mr. Bernstein referred to Exhibits 27 and 28. The first is the document between 1836 Buffalo Color Press, NEA's subsidiary, dated in October of 1955, by virtue of which the assets of Color Press were sold, and he said those assets were insignificant and Color Press' position in the business was insignificant, indeed, it was only one of several printers whom NEA used, including Greater Buffalo. But in that document, your Honor, he apparently with subjective conviction, asserts that we have forever committed

Greater Buffalo to pay a commission on the printing business and that is what was turned over to Greater Buffalo, printing business, no natter whether NEA or United Press, United Features, or anyone of the other companies who placed that business initially with Color Press, continued to have it. There is not a word in the contract to that effect. Nothing in the contract requires that interpretation. Surely before an illegal interpretation could be placed upon a written contract,

1837

there must be proof of the actual employment of the contract for that purpose.

Now, your Honor, with reference to Exhibit 28, which is the contemporaneous contract between NEA and Greater Buffalo, there again there are provisions for payment to NEA for what I call its sales services. These color comic supplement contracts, your Honor must be sold just as a household product must be sold, and you don't always keep a sale, keep a satisfied customer unless you go back and service the account.

The COURT: Do you have any proof of that in the case?

Mr. STEVENS: The proof your Honor, is that this is new business placed by NEA with the printer. When we say "placed by NEA with the printer," that means NEA employs the printer to do the printing for it. In other words, Greater Buffalo sell the printing to NEA, it doesn't sell it to the papers

1838

who are customers of NEA's. Your Honor, at this stage of the case, not having affirmative proof from our side,

again we must turn to the contract itself, and unless that contract literally compels the illegal connotation and interpretation upon which Mr. Bernstein insists, I respectfully submit that the contract must be read as applying to business which we place with Greater Buffalo for printing, and which we retain as our printing. In other words, if one of our contracts were taken over by Hearst, and it placed it with Greater Buffalo, we would expect no commission, we would get no commission.

The COURT: I have your point.

Mr. STEVENS: One other point I would like to make—

The COURT: I am not going to close out, I am sure Mr. Bernstein wants to have rebuttal and I am sure there may be surrebuttal by Mr. Raichle, possibly, and I am not closing the door. I sent a note home that I shall not be home
1839 for a while. We will take a short recess.

(Thereupon the court was in recess at 5:30 p.m.)

PROCEEDINGS RESUMED PURSUANT TO RECESS, COMMENCING AT
5:45 P.M.

The COURT: Mr. Stevens?

Mr. STEVENS: At the recess I had just talked about the contract relating to the sale of Color Press and NEA's sales agreement with Greater Buffalo. I would like to add that if your Honor searches the complaint from caption to jurat, he will not find any reference to Buffalo Color Press in that complaint.

In other words, it is akin to what your Honor said in questioning Mr. Bernstein. He said, 'We make no question about the propriety of the sale.' You said, 'You are trying to enmesh

NEA in this case with it.' That is precisely what is 1840 happening. I respectfully submit that when your Honor reads the contracts and comments in our written brief upon them he will see that these are straightforward business agreements. As a matter of fact, in the contract for the sale of assets of Color Press there isn't even a covenant not to compete, which is certainly one of the most ordinary covenants one would expect in the sale of a business.

With reference, briefly, to what has been called the Beverly truce; that agreement so far as it is indicated in the record, existed solely between NEA and Hearst. Hearst's participation in it, according to page 346 of the record, was only one or two instances. Mr. Feldman, who conducted the inquiry, said to Mr. Nicht, "When you say some instances, does that mean that you recall one or two cases where King did not go out and actively solicit a newspaper account being serviced by NEA?"

The answer was, "That's right." In other words, the 1841 maximum compliance with that so-called truce, which both Greater Buffalo and NEA have pointed out means a temporary cessation of hostilities in one or two instances, the maximum adherence to that so-called truce by NEA would extend no further than May of 1957.

The Government may well contend, it has in its brief, that certain other acts showed a compliance. The truth of it is that the documents mentioned by the Government do not show such compliance, but indeed show, first of all, that there was serious competition between NEA and King Features and, furthermore, illustrate a situation which existed under the contracts, which are in evidence in this case, which gave Hearst an ad-

vantage price-wise on the printing of color comic supplements up to approximately a run of 100,000. I am referring particularly to Plaintiff's Exhibits P-41 and P-42. Your Honor 1842 will recall that there was some discussion at the trial concerning a letter from Mr. Anderson to Mr. Kenneth Koessler, dated March 4, 1960, referring to a ten-page standard section of the Sioux City, Iowa Journal and there is a reference to the fact that King Features was undertaking to obtain this business—either in that letter or in P-43—yes, it is in P-42. Now, this letter shows on its face the existence in 1960 of sharp competition between NEA and King. The letter, P-43, dated March 15, 1960, refers to a Sioux Falls. Now, I thought myself, from looking at the documents for some time, Sioux Falls and Sioux City were probably the same, and didn't really pay any attention to it. The fact is that Sioux City, Iowa is at the confluence of the Big Sioux River and the Missouri River, I believe in the northwest corner of Iowa; and Sioux Falls is some sixty or seventy miles up the river in South Dakota. In this letter

of March 15, 1960, Plaintiff's Exhibit P-43, there is the 1843 statement that "Fargo and Sioux Falls go together as I understand it, and the combined circulation is in excess of 100,000." Now, the import of that statement is not anything conspiratorial, it doesn't connote or indicate a wrongful agreement. It states the fact that under the arrangements which NEA has with Greater Buffalo, its printing costs, your Honor, for an eight-page standard section include two elements, just as a public utility rate often has two steps, ready to serve charge and a consumption charge, this has a make ready charge of \$216 and a charge per thousand for printing of \$0.49. If one looks at the King contracts, which are represented by P-2 through P-6, he will see that the rate for printing by International Printing Company to Hearst is a combined rate in one figure and up to as many as ten million sections of fours, 1844 not eights, the price is \$5.34%. It is too late to push the mathematics of it, but when one does he will find that at about 100,000—actually, somewhat above 100,000 per run, the rate with a flat make ready charge and a charge per thousand of printing, which NEA enjoyed, permitted it to have a slightly beneficial rate for printing as against that enjoyed by King. Below that it was otherwise. So that when Mr. Koessler said that he understands Sioux Falls, that is, Sioux Falls, South Dakota and Fargo, North Dakota go to-

gether, he is talking about the fact that they have a ready print which can be printed as a single run, with mere inserts to change the name of the paper, the banner as they call it. So that there is an actual economic explanation for that letter. Instead of showing anything like adherence to a conspiracy, it shows the intensity of competition existing between Hearst

and NEA, and the fact that Mr. Koessler was naturally 1845 fully cognizant of the possibility of NEA's competing on an equal footing when it got to a point where the total run on a given color comic section was somewhat in excess of 100,000. The upshot of the Beverly truce, your Honor, is that it was insignificantly adhered to, if at all, by—

The COURT: That is the hotel?

Mr. STEVENS: That is the hotel meeting, that is the Beverly meeting—that if it was adhered to at all, it was only on one or two occasions, by the record, by Hearst, on no more than three instances over a period definitely terminating in May of 1957, sharp competition shown between NEA and Hearst after that, and no evidence in the record in this equity case showing persistent adherence to it.

Finally, on that subject, it is not the subject of a separate charge in this complaint. It is charged only as an integral 1846 part, a means of our purportedly entering supposed prior existing conspiracy between Hearst and King.

Finally, on this sequence in developing our argument, there really is no proof in this record of the size and extent of the business done by NEA. Mr. Bernstein admitted it was a contest on the subject. The exhibits I think, are 60, 61 and 62, and are exhibits which were identified only in the proceedings for the temporary injunction, to which NEA was not a party, and while we stipulated that Mr. Hamlin's summary of Mr. Gorman's survey was accurate, we didn't stipulate that Mr. Gorman's survey was accurate, but merely said that Mr. Hamlin did an orderly job when he summarized what was recorded in there.

So there is no proof, except the admission today that our position in the industry was insignificant.

The COURT: Let me ask you this. Do we treat this 1847 thing today as a motion for a non-suit? I know we have the problem of Nicht's memoranda, and so forth. I haven't really gotten to it thus far. Do we all treat this as a motion for a non-suit?

Mr. BERNSTEIN: As I understood your Honor's remarks at the close of the evidence, the Government cannot get Nicht's documents in unless it shows that it has made a prima facie case of conspiracy. If it convinces the Court that it has made a prima facie case of conspiracy and the documents are received, then the defendants have the opportunity to argue that even with the additional documents the case should be dismissed.

The COURT: Well, basically, it is a motion for a non-suit.

Mr. BERNSTEIN: I would say that the same issue is involved.

Mr. STEVENS: Yes.

The COURT: Thank you.

Mr. STEVENS: Your Honor inquired during Mr. 1848 Raichle's argument as to what he conceived to be the genesis of this case, at least as I understood your Honor's inquiry—

The COURT: Well, you know I come in here just about the time this case came in here and I was confronted by certain remarkable behavior. I never quite knew, really—it has nothing to do with it when I started talking about Senator Sparkman, after all he has nothing to do with this case, except you are provoked by things like that, you like to learn, it may be just curiosity. I thought maybe I could finally run it to the ground. It has nothing to do with the law suit.

Mr. STEVENS: I don't think my remarks would be any more than speculation, so I will not make them. I do want to—

The COURT: Do you want to make them? It might be enlightening. As I say, early, when I first came aboard, this was one of my first cases, and suddenly the image changed, and everyone wonders why images change, I wondered, and I 1849 have always wondered, and today I thought maybe I would probe at that a bit. Do you want to comment?

Mr. STEVENS: I think the genesis of this case, as I have observed it, is that a former Hearst employee, a man named Jack Hornady, who operates a color printing company, as I understand it, in Virginia, complained to the Government, and he is as much a complaining witness as you and I have known in the garden variety grand jury proceedings, which we have all participated in, and that one of his bête noires was Frank Nicht, and because of his dissatisfaction with Nicht and his knowledge of the inner workings of the Hearst organization which he had, and indeed the young lady who was here and testified in an

effort to bring about the admissibility of the so-called Nicht documents, said that she had worked for Mr. Hornady, and I believe your Honor will find that it was Hornady's com-
1850 plaint, it was Hornady's knowledge of the workings of the Hearst organization, his knowledge of its weaknesses, his knowledge of its greediness, his knowledge of its efforts to dominate, which was the background for this entire proceeding, and that is how we got where we are. I further think, your Honor, from the observations that I have made, that the palpable shift in the position which the Government is taking in the course of this case comes from the fact that having started on what it initially assumed or acted as though it had a basis for criminal proceeding, having changed its mind and filed a civil case it later found that it was treading on very important political toes who yelled "ouch" loudly, and that it was hurting Hearst, and Hearst went to it and yelled for help. I think that is the fact of the case and that is how we are here today,
1851 and as Mr. Bernstein said, Hearst went to them and said, "Just tell us what it takes to get out, we'll take it." Apparently, Hearst was willing to pay the price. We, on behalf of NEA, as such a small factor in the business, were more eager than anybody else to be spared the burden of this trial, but when we saw what Hearst was willing to swallow, we couldn't do it, we would not do it. We didn't feel we were guilty then, we do not feel we are guilty now, and we respectfully submit that the Government has wholly failed to adduce that kind of proof which at this point of the case entitles them to hold NEA in. We respectfully request that when your Honor has had an opportunity to consider this argument, these arguments, to study the briefs and the documents, that NEA should be dismissed on these charges under Sections 1 and 2.

The COURT: Well, I never demanded it, but I often wondered what somebody's version of it all was. Thank you. Now, 1852 Mr. Bernstein?

Mr. BERNSTEIN: The main thrust of the argument of Greater Buffalo and NEA is that the conspiracy does not exist today, there is competition today, and since the Government's main case is that they agreed to eliminate competition, it has no case, it shouldn't be here. Unfortunately, I think that argument prejudices the Government because we are in this posture purely as the result of mechanics. Had no efforts been made—

The COURT: Pardon me, where is the competition today? You said there is competition, where is it?

Mr. BERNSTEIN: The point is this; this is really to answer that argument, to answer that argument if it has any merit. The Government cannot conceive—

The COURT: It's in equity, I think I should know.

Mr. BERNSTEIN: That is correct. The Government contends that Greater Buffalo is in this position that it is today 1853 as a result of the arrangement it made with King way back then. Let's assume arguendo, without conceding—

The COURT: Didn't you say there is competition today?

Mr. BERNSTEIN: I didn't say that, I don't want to concede that.

The COURT: I thought you said there is competition.

Mr. BERNSTEIN: I said assuming, arguendo; assuming for the purpose of argument that there is competition today, assuming that Greater Buffalo dominates the printing industry and that there is competition between Greater Buffalo, King and NEA for customers, assuming they no longer allocate customers, assuming that is the situation today; this Court has the equitable power because Greater Buffalo achieved that position as a result of an illegal agreement, this Court has the equitable power to say, 'I'm going to provide the opportunity for competition that existed between King and 1854 Greater Buffalo in 1955; today.' What was that position?

At the time Greater Buffalo acquired International, just immediately at that time, King was in a bind. King either had to sweeten the pot as far as International was concerned, pay it more for printing, or King had to do the printing itself, or King had to induce some other color printer to come over to International's plant and operate it. If it had done that then without an agreement with Greater Buffalo not to compete, then Greater Buffalo would not have been in the position to get International. The Court has the power to do that today by an injunction against Greater Buffalo doing any printing for King or NEA as a customer. Greater Buffalo is permitted to print—could be permitted to print for the newspapers, but if King wants to get the business as a printer, if NEA wants to get the business as a printer, they have to go out and 1855 get their other printing establishments and make other arrangements to compete. At the same time—

The COURT: Who would be the beneficiary if that were so?

Mr. BERNSTEIN: If the Court at the same time required within a certain specified time Greater Buffalo would have to sell International, Sylacauga and Lufkin, and if it isn't sold within that time then it could no longer print for King or NEA; King or NEA would have to go around and either operate it themselves or get another printer or get out of the business of printing, which it isn't doing now anyway. The public would be the beneficiary, the newspapers would be the beneficiary.

The COURT: You said King is not a party here any more.

Mr. BERNSTEIN: King is a party for the purpose of relief. There is a provision—

The COURT: King made a separate decree here. You said to tell King to get out or something—

1856 Mr. BERNSTEIN: The Court has the power—

The COURT: I understand all that, but King isn't here to speak up in answer to what you say.

Mr. BERNSTEIN: The reason for that, your Honor, is that the Court provided that hearings on relief would not be done at this session. At the session where the Court would consider in depth and in detail the hearing on relief, the judgment of this Court provides that King then has the opportunity to come in to be heard and defend or refute any one of the remarks that I made. The Court has given King that power, that opportunity.

The COURT: I hadn't realized that. You say that I have the power to bring them in under a decree—

Mr. BERNSTEIN: Well, the Court has the power to prohibit Greater Buffalo—

The COURT: I'm treating this as an ordinary law suit, with King out, and you are asking equitable relief.

1857 Mr. BERNSTEIN: It isn't that kind of law suit. The Court would not accept the judgment against King, let King out, unless there was a provision in it that King had the opportunity to come in and be heard with respect to any prohibitions that the Court would impose against Greater Buffalo. If the Court sees fit to impose a prohibition against Greater Buffalo printing for King as a customer—it can print for the newspapers—if it prohibits Greater Buffalo from printing for King as a customer and at the same time orders within a specified time Wilkes Barre and Lufkin and Sylacauga be sold, then King has the option of purchasing those plants and operating in competition with Greater Buffalo or getting out of the print-

ing business, and King has the opportunity to be heard before this Court because this Court has provided in its judgment that King will have the opportunity to come in and be heard 1858 on such a purpose. It is unfortunate that we get into relief at this time. The way the case was developed, the first issue to be decided was whether there was a violation of Section 1 and 2 of the Sherman Act, then was there a tie-in by NEA. We don't have to litigate that with King, King has given us the relief as against the tie-ins, and then the question of relief for the Court, and that time King would have the opportunity to appear before this Court and be heard with respect to any one of those provisions.

The Government has been charged with favoritism—

The COURT: Now, Mr. Bernstein, you are talking about relief here. I am glad to hear the balance of your argument, of course, but I hadn't thought about what you are talking about. You are talking about alternative relief?

Mr. BERNSTEIN: What I am saying, your Honor—

The COURT: Assuming that somebody finds you are 1858 right?

Mr. BERNSTEIN: That is correct.

The COURT: Finish off your main argument. You are talking about alternative relief, assuming I found the Government should prevail?

Mr. BERNSTEIN: That is correct. It isn't necessarily alternative relief because at the same time that the Court would order the divestiture, it provides the equity of not permitting the culprits, King and NEA, to profit by it, it provides the opportunity to put them in a position where they were when King made the illegal agreement.

The COURT: Go back to your main argument.

Mr. BERNSTEIN: Would your Honor care to hear my explanation concerning Senator Sparkman?

The COURT: No. Look, Senator Sparkman was just a name in the wind. He seemed to change the hue. The wind was blowing from the east, it changed to the west; or from the north to the south. I have often wondered, but I care less.

1860 Mr. BERNSTEIN: I would like to shed light on the genesis of the case.

The COURT: I don't care, that was a long time ago and far away.

Mr. BERNSTEIN: All right, your Honor. I don't want the record to show that I am unwilling to refute the remarks of defense counsel, and suffice to say for this point that I categorically deny charges that were made of favoritism or improper activity. At an appropriate time this will be presented. Right now I would like to get back to the main substance of the argument, because I think an important point that Greater Buffalo has made, and challenged counsel to deny, is that there is not a scintilla of evidence in this record to show that King had anything to do with acquisition of International. Apparently counsel was referring to the fact one of the documents under

advisement, the Nicht memoranda, would establish that 1861 King took credit for the International sale, that Nicht

said that. That is not in evidence in this case at the moment, that is under advisement. What is in evidence in this case? Koessler's own letters, P-15 and P-16. The first thing that I would like to invite your Honor's attention to with respect to these exhibits—and you have examined them before—is the form. Note that it is signed formally by J. W. Koessler, President. Note that he refers to points discussed on which we agreed, we agreed, we agreed could go into a contract. Mr. Raichle seems to make some distinction between an illegal agreement and a written contract. It is clear from this document that Koessler was trying to persuade Nicht that an agreement had already been reached on these points. What was the first agreement reached with respect to Paragraph 1, it says, "Greater Buffalo will purchase International Color Printing."

If King had nothing to do with that transaction why did 1862 Koessler have to give him that assurance that Greater

Buffalo would purchase International Color Printing. What business was it of Nicht's if this was a private transaction between the family in Wilkes-Barre and Mr. Koessler. No, this was an agreement, he said, "We agree that Greater Buffalo will purchase International." And in that same sentence Greater Buffalo agreed that Greater Buffalo would assume a printing contract which is presently being negotiated between International Printing Company and King Features. This makes it clear that at the same time Nicht was negotiating a ten-year contract with International, was sweetening the pot, provided for an escalation clause. Mr. Raichle says, "Wait a minute, this acquisition was consummated in June of 1955—" June 25th,

I believe, Greater Buffalo acquired International—it
1863 was not until July 30th—he said August 19th, it was
some such later date. I submit to your Honor Exhibit
P-23 in evidence, the contract between Nicht and Interna-
tional. Greater Buffalo would have us believe since that is dated
August 19th and it says, "Attached are three signed copies of
an agreement dated July 30th", that therefore the agreement
between King and International, that Nicht was talking about
on June 2nd, hadn't been executed until after the acquisition
of International.

Now, we get to a curious point, we find that as Exhibit A to
this July 30th agreement is a rate schedule that followed page
4—after the signatures on page 4 there is an exhibit A, that is
the rate schedule, that is the meat of the agreement. Note the
date on that, June 16, 1955. June 16th, this is before the acqui-
sition, and the first page of Exhibit 23, the second paragraph,

makes that clear. It makes it clear that the agreement
1864 on the rate was entered into June 16th, because the
second paragraph of the letter says: "I would like to
point out that in Section 'A' of Article 7, Exhibit 'A', is re-
ferred to as being dated June 16th—", then it talks about
the rates that went on subsequent to that. The Government's
point is that it was all one transaction. As Mr. Koessler in-
dicated in his June 2nd letter, Exhibit P-15, where the first
paragraph is that Greater Buffalo will purchase International
and it will assume a contract between International and King.
It is all one transaction. Now then, it says: "(2) In a contract
which King Features Syndicate will negotiate with Greater
Buffalo Press, Inc., the contracts and business which each com-
pany presently hold, will continue to be held by the same
parties."

The COURT: Wait a minute, that is Nicht's letter signed by
Gorman?

Mr. BERNSTEIN: P-15, your Honor. I confused your
1865 Honor. P-23 is Gorman's letter to Nicht, but note the
date, August 19, 1955, that is after Greater Buffalo had
acquired International, so that Gorman at that time was an
agent of Greater Buffalo, and he is referring to a contract that
was dated June 16th, that is, the rates were determined on
June 16th. Now, referring back to P-15, Koessler's letter to
Nicht, in the first paragraph he said: "Greater Buffalo Press,
Inc., will purchase International Color Printing Company, and

assume a printing contract which is presently being negotiated—" the point is this, that was all taking place at one time.

The COURT: I see your point.

Mr. BERNSTEIN: The next important point that Mr. Raichle makes is that this was an aborted arrangement, Nicht wanted it but he never got it. P-16 is the same type of letter that your Honor just read, it is dated June 13th, a week later. It is 1866 pretty much the same form. It shows there was a progressive set of negotiations and dealings, they were bargaining back and forth. Mr. Koessler says to Mr. Nicht: "Dear Frank: These are the provisions on which we are in agreement, and which should be included in a contract—". Now, if your Honor will note P-16, the second page, the form there; this is a precise arrangement, it isn't some loose talk, it's got prices listed, careful language there, and on page 3 it's got a detailed schedule. It is kind of a formal document, it isn't some haphazard note or introspective musings. On page 4, paragraph 9, Koessler says that one of the terms upon which they agree—and this is an illegal agreement—it was nonetheless written—"For the period of this contract, the Greater Buffalo Press, Inc. will contract to print newspaper supplements only for 1867 such accounts as it presently holds, and for such new accounts as it is privileged to negotiate in contract under this agreement, and for King Features Syndicate."

Now, Koessler admits that agreement was in effect. Now, the thrust of the argument then is because this was not put into a formal contract it really aborted, it didn't work out, but the Government's position is that it aborted after the conspiracy to monopolize for Greater Buffalo had been accomplished by Greater Buffalo's acquisition of International.

Let's look at P-16. The first paragraph, that was carried out. The first paragraph was that Greater Buffalo will purchase International, that was accomplished; and we'll assume a printing contract which is being negotiated, that was accomplished. The next paragraph is that Greater Buffalo Press and King will continue to hold such contracts as they presently have. Then, if you recall, Mr. Stevens read a letter dated January 26, 1956, P-40 in evidence. In January 26, 1956, Koessler reiterates to Nicht in the last paragraph: "It can be worked out however, under the idea on which we are cooperating, namely, each of us to hold what we have and to share with King any new business which is obtainable."

So that agreement to share business with King was still in effect after NEA was brought into the picture. The only reason that—

The COURT: I'm pondering over some of the sentences. I'm listening to you.

Mr. BERNSTEIN: There is a—

The COURT: This is almost cryptographic, I mean the one of January 26th that you handed me.

Mr. BERNSTEIN: On P-17, your Honor, P-17 is a letter from Koessler to Nicht, also on January 17th—

The COURT: You handed me this one here. You hadn't finished that, P-40?

Mr. BERNSTEIN: Yes. P-17 shows it even clearer at 1869 about the same time, it's less cryptic, dated January 17, 1956, from Koessler to Nicht, and note in the first paragraph he says: "I am returning second draft of the proposed contract."

Now, it got to the point of a draft of a contract. In the next paragraph he said: "The only thing I have changed is the exclusive commitments on the part of both parties." That would indicate that P-16, which Your Honor has before him—

The COURT: Yes.

Mr. BERNSTEIN: That would indicate that all of the terms and conditions of P-16 were still in effect. He said, "The only thing I have changed is the exclusive commitments on the part of both parties." In other words, he is saying that no longer will Greater Buffalo be the exclusive printer for King, nor is King obliged to put all of its printing in Greater Buffalo,

but, obviously, because between January 17, 1956 and 1870 June 13, 1955 [sic], Koessler had forgotten what he wanted, he got International, and furthermore, he had made an arrangement with NEA, he was going to get all of NEA's business.

The COURT: You said he got what he wanted. As I understand it, this is a limping company in a limping community, owned by a limping family. Why couldn't he have grabbed that without any argument whatever?

Mr. BERNSTEIN: The first reason why he couldn't have grabbed it was Section 7 of the Clayton Act which prohibited it, it was illegal—

The COURT: He could have another printing plant?

Mr. BERNSTEIN: Section 7 says no corporation—

The COURT: Wait a minute, Koessler is a printer, he can have a printing plant anywhere he wishes in the country?

Mr. BERNSTEIN: If he establishes it himself, yes. If he does it by buying out a competitor, the result of that—

1871 The COURT: It's a printing plant, he is a printer?
 Mr. BERNSTEIN: He is a competitor of—

The Court: He is a printer. Isn't he a printer?

Mr. BERNSTEIN: Yes, he is a printer.

The COURT: He can buy a hundred plants if he wishes?

Mr. BERNSTEIN: No, that isn't right. He can't buy one hundred plants if in so doing he substantially lessens competition.

The COURT: Wilkes-Barre is an old coal mining town, as I understand it, a hilly section, which is long past as a prosperous area in our times. Now, there is a place down there called International Printing Company, it is not too far from Buffalo. Do you mean to tell me if a man named Koessler wanted to buy something in Wilkes-Barre, and he is a printer, and let's say he made a success of his own printing business, do you mean he couldn't buy that without running afoul of the federal laws?

Mr. BERNSTEIN: I say yes, and do you know why, Your Honor?

The COURT: You say he couldn't?

1872 Mr. BERNSTEIN: He could not under the circumstances of this case.

The COURT: You mean surrounding him with all the intrigue you put it around it?

Mr. BERNSTEIN: No, no, no.

The COURT: I thought he could have whatever he wished.

Mr. BERNSTEIN: The only thing of value in that plant that you have just described, Your Honor, was King's business, eight million dollars' worth of business, that was what was of value.

The COURT: I have your point, I understand that, but I say there is nothing wrong per se—

Mr. BERNSTEIN: There is nothing wrong—

The COURT: —in Koessler, who I understand historically started in here with nothing, and because he can make something work that nobody else can, made a success. I know Koessler's history. I was a young lawyer and Koessler started out running a law publishing firm, he was looking for business

out of the lawyers back in the depression, I remember that, The International Law Journal, the International Gazette, and he had a competitor of great magnitude, The Daily Law Journal. It was a constant fight back in those depression days to get the foreclosure publication. I remember this, I went through this tour. What I am trying to say is that somewhere along the way this man got off the ground, began to make an excellent printing press. How he got in the color business, I don't know, but he was away and winging. You tell me he can't buy something in Wilkes-Barre that was on its knees, faltering—

Mr. BERNSTEIN: Your Honor has taken that as an isolated fact.

The COURT: And you are surrounding it by a great intrigue of a conspiracy, I know that.

Mr. BERNSTEIN: That is what makes the difference. Greater Buffalo was permitted to do that, and the objective of the Government is in this law suit is to provide that climate to let him do all the printing he wants to do, fairly, competitively, but not to retain what he has achieved solely by relationship with this illegal agreement with King, that is the whole point.

The COURT: I understand that. I asked you the blunt question, whether a man who came up by his boot straps couldn't, in due course, acquire other places.

Mr. BERNSTEIN: He should, and we encourage it, we like to see it done. It is only when he does it illegally through this intrigue—

The COURT: I understand your point. It is getting late. I am glad to hear you, but—

Mr. BERNSTEIN: I have to answer some of NEA's assertions. I will do it briefly, in a nutshell.

In a nutshell, the offense that NEA has committed, is when it met in the Hotel Beverly with Nicht and it agreed not to compete for Nicht's customers, and the documents in evidence show that NEA adhered to that agreement, as late as 1957 it adhered to that agreement. In the Consolidated Laundry case cited in our brief, the argument was made there was only about \$400,000 worth of interstate commerce involved, therefore it was de minimis. The Court held, no, when you reach an illegal agreement with your competitor—in this case it was for over a million dollars' worth of business—

when you agree not to compete with them, that is a violation of the law.

The Government invites the Court to focus its attention on that agreement. That was the illegal act, that was the illegal act. The reason the Government brings in Buffalo Color Press and all these other details—there is only one reason for it—it is to show what NEA's intent was at that time, because the Government has to prove two things; it has to prove that NEA

1876 knew that there was a conspiracy between King and Greater Buffalo when it made the agreement not to compete with King, and it also has to prove that NEA had the intent that Greater Buffalo monopolized the printing and that with NEA and King, the three of them would monopolize the sale. In order to show that intent we bring in the Buffalo Color Press incident because the terms in the Buffalo Color Press contract show that—and the contract speaks for itself, it isn't my interpretation or anyone else's, P-27 and P-28 stand on their own faces, those documents show that—

Mr. RAICHLE: Stand on their own faces?

Mr. BERNSTEIN: I misspoke, your Honor. On the face of P-27 and P-28, on the face of the documents, it is clear and unambiguous from the language that Greater Buffalo agreed that as long as it was doing printing for any of the designated customers or any customer that NEA brought in to it, it was going

1877 to remunerate NEA and it was going to charge the newspapers the same rate it was charging anybody else.

Now, the Government says that those details under which it sold Color Press to Greater Buffalo showed that it had an intention that Greater Buffalo would monopolize the printing, and that when it made its deal with King it was not just a lawful, normal arrangement of a plant going out of business and saying, "I don't want to print any more, who is going to print for me? World Color, will you print for me, World Color, will you now be my printer? Acme, will you be my printer? Eastern, will you now be my printer?" No, he congratulated Greater Buffalo for being now the largest printer by its acquisition of International, and "we are going to join the bandwagon, we want to talk to you about this new setup." The first conversation that we have in the record is this conversation with Nicht agreeing with him not to take any of his customers away, and that arrangement was arranged 1878 through Koessler's invitation.

If I have not specifically refuted any of the points

made before, it is only in the interest of time, and not because I wish to concede by my silence those points are correct. That is all I have.

The COURT: One thing I wanted to say to you; at the beginning of your argument you suggested, because of my comments, some statements about Senator Sparkman, which is, as I told you, long ago and far away and of no particular interest to me in resolving this, no interest at all in resolving this question. But I didn't want to shut you off if you had something to tell me about it.

Mr. BERNSTEIN: Yes, your Honor, you indicated before that you wanted—

The COURT: I told you, and I will repeat again, one of the first cases that I had was this case, and there was a certain hue to it as far as the Government was concerned, as I 1879 saw it.

Mr. BERNSTEIN: A hue in what way, your Honor?

The COURT: A hue of aggressiveness against everyone concerned, including Hearst.

Mr. BERNSTEIN: That still persists, as far as—

The COURT: Just a minute. There was an adjournment after the first beginning of things, and then the tide seemed to change and it was obvious to me that the Department of Justice had had a slight change. Now, if you don't know anything about that—

Mr. BERNSTEIN: The only thing I do know about it—

The COURT: The Sparkman thing was scuttlebutt, go ahead.

Mr. BERNSTEIN: The only thing that I can tell you from my personal knowledge as to Senator Sparkman is, at the same time that Greater Buffalo's counsel was importuning the Department of Justice to join in the request to the Court to lift the injunction, at that very same time, in some of the same meetings, representatives of Senator Sparkman's office 1880 were importuning me to achieve the same purpose and stating—Senator Sparkman's representatives stated his interest in the case was to provide jobs in Sylacauga, Alabama, and to restore to the people in Sylacauga the opportunity to make—to get a return on their investment that they had contributed toward the opening of the plant. That is the only thing that I have personal knowledge of and can shed light on with respect to that.

The COURT: Well, I never understood it, I shall never understand it. I didn't realize you were in charge. Your advocate came down here with respect to a position of Hearst. I can't remember, it was some years ago. But there wasn't any question at all that the hue changed, I can't say with accuracy, but the image changed, Mr. Bernstein, with respect to the Government's position, and I never understood it. Well, that has nothing to do with the merits.

1881 Mr. BERNSTEIN: I'll say this, your Honor. Your Honor lifted the injunction—

The COURT: That is long after the situation I'm talking about.

Mr. RAICHLE: Relaxed the injunction.

The COURT: This is the time when your people first came aboard and presented what I thought was a fairly tight picture and, as far as Hearst was concerned, the picture lessened the next week.

Mr. BERNSTEIN: Well,—

The COURT: The next hearing. I never understood that.

Mr. BERNSTEIN: I can't shed light on that.

The COURT: I'm sure you couldn't. I don't think you were there at that time in that particular area. You may have been. That has nothing to do with the merits.

Mr. BERNSTEIN: Now, as far as procedure, unless there is something else—

1882 Mr. RAICHLE: I have just one thing. I went through this accurately, and without argument or unduly prolonging the hour, in view of counsel's position and particularly in view of his reluctance to assert there has been and continues to be competition between King and Greater Buffalo Press, I now move, your Honor, as sincerely as I know how, earnestly is perhaps a better word, to dissolve the temporary injunction restraining Greater Buffalo Press from transferring runs of Hearst's from International Color Printing Company to Sylacauga. The claim has always been, under oath and otherwise, by these gentlemen representing the Government, that the competition between Greater Buffalo Press and Hearst was such that Hearst was at a disadvantage, and that Greater Buffalo Press could take Hearst's customers in the absence of that injunction. Now, they have abandoned that position through lack of meeting the issue squarely. These are important rights

1883 involved here and I respectfully submit to the Court that in light of what has been said today, what has been developed in the course of these hearings, that injunction should be dissolved.

The COURT: I am sure you would not expect me to decide your motion immediately. I will take that under advisement.

Mr. RAICHLE: Very well, your Honor.

The COURT: On the record, let us decide, gentlemen, exactly what is before me among the litigants. You make a statement of what is before me.

Mr. BERNSTEIN: There is initially before you, your Honor, Government's motion that documents 33 through 39 and documents 44 through 51, which were received against NEA only, now be received against Greater Buffalo on the grounds that the Government has established Greater Buffalo and NEA had been engaged in a conspiracy to allocate customers, and the conspiracy charged in the complaint, and that having established that conspiracy by evidence outside of these 1884 documents, these documents should now be received as against Greater Buffalo.

The COURT: What is the horizon that you claim that you have made wherein there is a conspiracy between NEA and Greater Buffalo Press, wherein the admissions or communications of one co-conspirator can be used against the other? Tell me that.

Mr. BERNSTEIN: In a nutshell, there are NEA documents in evidence which say that: "Because of our agreement with King and Greater Buffalo we cannot solicit your business." They say to the newspapers, "We padded the price to the newspapers because of our arrangement with Greater Buffalo, we have padded the price because we can't compete with King." And Nicht's testimony that he met in the Beverly Hotel at Koessler's arrangement and invitation and agreed with NEA that they would allocate each other's customers.

The COURT: All right.

Mr. BERNSTEIN: Exhibits 64 and 15 through 18 were 1885 received against Greater Buffalo only. These were documents written by Koessler, and so on, and the Government now moves that they also be received against NEA on the same grounds that the conspiracy has been made out.

The Court has under advisement documents 10 through 14, 19 through 22, 24 through 26, 55 through 57, 61 through 63, 65

and 66 through 68. Most of these documents were the Nicht memoranda or Koessler memoranda.

The COURT: I remember that, yes.

Mr. BERNSTEIN: And the Government asks these documents now be received against all parties on the ground that the prima facie conspiracy has been made out.

The COURT: Give me the grounds again why you think they are proper.

Mr. BERNSTEIN: Well, I think that—

The COURT: You say they are memorandum made in the usual course of business?

Mr. BERNSTEIN: They were, yes, definitely.

The COURT: I'm not being an advocate, you say those 1886 were part of his business files?

Mr. BERNSTEIN: Part of his business files, made contemporaneously with the transaction, and furthermore Judge Ryan held in the ICI case, cited in our brief, and Judge Leahy held in the DuPont case, cited in our brief, that anti-trust cases—

The COURT: Now, you say partly under the business—

Mr. BERNSTEIN: No, no.

The COURT: Record law.

Mr. BERNSTEIN: No, your Honor ruled on that. For the record, I contend they are also admissible under the business record statute. Your Honor ruled, and I am not going to reargue that. These are admissible under a special exemption to the hearsay rule, which provides where a prima facie conspiracy has been established by independent evidence outside of the agreement, and I have tried to confine all of my remarks at the chart board to—

The COURT: Supposing they go to conversations, for 1887 example, allegedly between Koessler and himself. Koessler and I have talked, we can't agree, but Koessler wants to go one way and clean up the west, I want to have the east; now, how would you like to be confronted with that?

Mr. BERNSTEIN: They do more than that.

The COURT: How would you like to be confronted with something like that as against you or Koessler?

Mr. BERNSTEIN: In the first place, they were confronted with that when Nicht's testimony was taken, and they deliberately—

The COURT: Tell me what Sylvester Ryan said now, I'm sorry I cut you off, what did he say?

Mr. BERNSTEIN: Judge Ryan said that when an antitrust conspiracy is involved, and this involves corporations and this involves people who have to deal with other members of the corporation, when they make records to memorialize what has occurred, to make records of what arrangements they have orally made with other people—

1888 The COURT: Wasn't this a regular course of conduct, like a diary, a business transaction?

Mr. BERNSTEIN: These are official memoranda to superiors—

The COURT: Here is a man that makes notes of whatever he thinks. I remember some remark at the last hearing, "What a difficult fellow he is," or words to that effect.

Mr. BERNSTEIN: That is one that is deliberately picked out, and I respectfully submit to your Honor that if your Honor will examine each one of those Nicht memoranda under advisement, from the language and the wording and the circumstances, you will see that these are the type—

The COURT: It seems unfair to me. I mean, that may be a naive way to put it. You say once it is established, the musings of one could be used against the other.

Mr. BERNSTEIN: These are not musings.

The COURT: They were found on his desk, unsorted things.

1889 Mr. BERNSTEIN: No, they were not. If your Honor will examine—

The COURT: The woman that was here said that he had these things in his desk at random.

Mr. BERNSTEIN: No, not at random. If your Honor will inspect the documents and the contents of the documents you will see these are formal, official reports, and as Judge Ryan said in the ICI case, the general rule of conspiracy is that—

The COURT: I know that, I know that well. I know you can't begin these things, I know you have to have the conspiracy, if it's part and parcel of the continuance.

Mr. BERNSTEIN: I am not arguing that, I am saying the general rule is it must be in furtherance of the conspiracy. Everybody would ask the question, how does this memoranda further the conspiracy, why is that in furtherance of the conspiracy? Judge Ryan's point was if it relates to the transac-

1890 tion, if it relates to the transaction and if it used to show the intent and purpose of the parties to it, as part of a corporate enterprise to report to superiors, and Nicht made these memoranda for his own records so that—maybe he used peculiar form, "Why does he do that and why does he do this", the purpose of the memoranda is clear from the secretary's testimony, it was to remind himself the following day, so it did further the conspiracy because it assisted him in his further dealings—

The COURT: Fine. I will pass on that. Thank you.

Mr. BERNSTEIN: I think I completed a recital of all the documents under advisement. There are two documents, there is Exhibit 9 that doesn't fall in that category. We withdraw Exhibit 9 at this time. There is one other document that doesn't fall in that category, that is a memorandum—I don't have the number at the moment, I'll supply the number to the
 1891 Court—that is a memorandum prepared by Gorman as an official of International before it was acquired by Greater Buffalo. It doesn't fall in that category and we will withdraw that exhibit. All of the rest we press be received in evidence.

The COURT: Mr. Stevens, do you have that particular exhibit in mind? Don't look if it takes a lot of looking. Go ahead.

Mr. BERNSTEIN: So that the posture of the case is the Government contends that these exhibits should be received in evidence. It is the Government's position that if the defendants subsequently move for a dismissal of the case on the grounds that the Government failed to establish a *prima facie* case, even without the documents under advisement it would be clearly erroneous for the Court to dismiss the matter. With the documents under advisement it strengthens the case
 1892 more. That motion has not been formally made and as of this moment what is before the Court is the Government's motion to receive these documents in evidence. That the Government would make the same argument in opposition to the defendants' motion to dismiss, whether the documents are received or not.

The COURT: That's what I asked you, if the posture is a motion for non-suit or motion to dismiss.

Mr. BERNSTEIN: I think it is. I would think that is what the defendants did state.

Mr. RAICHLE: We have objected to the documents on the record and repeat the objection to preserve the record. I conceive the situation to be this: if your Honor held, after considering the arguments and reading the record, at least reviewing it, and considering the briefs, that the Government had failed to lay a basis for receipt of the documents in that independent is not sufficient on which to base a finding of a conspiracy, that is, the conspiracy charge, that it would follow, as a matter of course, that the motion for a non-suit, for a judgment in favor of the defendant be granted. Certainly, if there is not enough evidence to make the finding required to be made before the documents be admitted, there is not evidence enough on which to say that the plaintiff made a case to survive a motion at the close of the plaintiff's case, if I make myself clear.

Technically, we haven't made the motion to dismiss, conceiving it ought to be made after your Honor—

The COURT: I understand that. Let's assume that it all came in, you would make it, nevertheless?

Mr. RAICHLE: Yes, your Honor.

Mr. STEVENS: Yes, your Honor.

The COURT: How about you, Mr. Stevens?

Mr. STEVENS: The position of NEA is the same, we have objected to each of the documents which is being offered for the reasons which Mr. Raichle stated, and we also wish the Court to consider certainly if the documents are not admitted and even if they are admitted to round out the record, in behalf of NEA, we would also like to join in Mr. Raichle's motion that the existing temporary injunction be dissolved, and point out to the Court that by the terms of the existing temporary injunction certain runs of NEA are presently frozen in the Wilkes Barre plant.

The COURT: The biggest problem I have, gentlemen, are these letters of Nicht's wherein he writes commentaries to himself. I don't want to characterize that. You say they are memoranda made in the business. But I think it needs more than that probably to establish it. On the other hand, you take the rest of the communications, as we know the law of conspiracy, if you once establish a conspiracy then the communications of one conspirator and the acts of one conspirator with respect to another are binding on all.

1895 Mr. RAICHLE: In the furtherance of it, in the furtherance of the conspiracy.

The COURT: That is right. That puts me to the problem, gentlemen; assuming I were to cast out Nicht's affairs, I mean wherein he writes notes to himself—not to himself, I characterize it that way—he writes notes for some purpose and left them in his desk. I still feel then that I may have to require some burden of going forward here. I'm talking about Mr. Raichle representing the Greater Buffalo Press. I don't know, I will have to sit down and think about that. I don't think there is need of any briefs, I think I can decide that quickly, and I can give you hopefully, a reasonable trial date. There is an image in the wind that there is going to be another judge here one of these days, but I am sure that won't happen before some time, but it would be helpful. Anyway, I will try my best, in fairness to the Government and all litigants, to decide that 1896 issue and give you a reasonable trial date if I decide that you have to go forward, I mean, with the defendant's proof.

Mr. RAICHLE: Your Honor has our briefs on the subject?

The COURT: Yes.

Mr. RAICHLE: I think we have briefed everything with considerable care, I don't know how much help it will be.

The COURT: I don't think there is any need of any more briefing, I have the package in hand, I will do the best I can.

Mr. BERNSTEIN: May I say one word with respect to the defendants' motion for lifting the injunction. I am completely taken by surprise with that. I think this should be a motion submitted and argued. The Government has always contended an early trial and prompt disposition of the merits should supplant an injunction. I want to make one point—

The COURT: Mr. Bernstein, let me say that surprise is 1897 always lightened by the passage of time. You can be sure that you will have time to recover before I decide this motion.

(Thereupon the court was in recess at 7:00 p.m.)

1898

VOLUME 5

[Caption Omitted in Printing]

Adjourned date of trial in the above entitled action held before the HON. JOHN O. HENDERSON, United States District Judge for the Western District of New York, commencing on June 27, 1967, at Buffalo, New York.

Appearances: *Lewis Bernstein, Esq.*, and *Elliott P. Feldman, Esq.*, Department of Justice Antitrust Division, appearing on behalf of the Government.

Messrs. Raichle, Moore, Banning & Weiss, by *Frank G. Raichle, Esq.*, and *James O. Moore, Esq.*, appearing on behalf of the defendant Greater Buffalo Press.

Messrs. Baker, Hostetler & Patterson, by *Richard Stevens, Esq.*, and *Sargent Karsch, Esq.*, appearing on behalf of the defendant NEA.

* * * * *

1899 PROCEEDINGS OF JUNE 27, 1967, COMMENCING AT
10:00 A.M.

The COURT: Gentlemen.

Mr. RAICHLE: Your Honor, before we get to anything else, I would like to present Mr. Stevens' associate and partner, Mr. Sargent Karsch, of Ohio. He is a member of the Bar of Ohio, a member of the Bar of the District Court there, I would like to ask your Honor's permission for him to participate in this.

The COURT: Pleased to have you, indeed.

Mr. KARSCH: Thank you.

Mr. RAICHLE: Well, we come to that point in the case where we call our witnesses, your Honor having reserved on our motion to dismiss. Shall I proceed that way?

The COURT: Yes.

Mr. RAICHLE: Mr. Koessler.

JOHN WALTER KOESSLER, called as a witness in behalf of the Defendant, Greater Buffalo Press, and being first duly sworn, testified as follows:

1900

DIRECT EXAMINATION

By Mr. RAICHLE:

Q. Mr. Koessler, what is your business, what do you do?

A. I am in the printing business.

Q. And with what concern?

A. Greater Buffalo Press.

Q. What office do you hold in Greater Buffalo Press?

A. President.

Q. Who are the stockholders of Greater Buffalo Press?

A. All of the members of the Koessler family.

Q. In other words, it is a closed corporation, owned by the members of your family, including yourself?

A. Yes, sir.

Q. When was Greater Buffalo Press brought into existence?

A. 1926.

Q. It is a New York Corporation?

A. Yes.

Q. Prior to 1926 what had been your business, sir, or occupation?

A. I was a newspaper reporter on Buffalo papers.

Q. Which of the Buffalo papers?

A. Well, all of them at one time or another.

Q. I see. When did you cease to be a reporter on the Buffalo papers and go into business for yourself?

A. I went into business in 1926.

Q. And what was the business and who were your 1901 associates?

A. My father, myself, a fellow by the name of Charlie Frieberg, a fellow by the name of John Tranter.

Q. Had he been connected with one of the papers, Mr. Tranter?

A. John Tranter was managing editor of the Daily Star, a newspaper which went out of business at that time.

Q. Did you and these other people whose names you mentioned, including Mr. Tranter, organize Greater Buffalo?

A. Yes.

Q. What was your contribution?

A. Money.

Q. I mean how much?

A. \$1,000.

Q. How much did Mr. Tranter put in?

A. \$1,000.

Q. And who else put in?

A. Mr. Frieberg.

Q. How much did he put in?

A. \$1,000.

Q. And with that \$3,000 in the aggregate, Greater Buffalo commenced business?

A. Yes.

Q. And what was its business at that time?

A. Well, we bought an existing company called—owned by a fellow by the name of Alf Tovey. He owned three newspapers—two newspapers, the International Gazette was one.

- Q. That was a neighborhood newspaper?
- A. Yes, in Black Rock.
- Q. That is in the northwest part of Buffalo?
- A. Right, and the Cold Spring Advertiser, which was a community paper over in the Jefferson—
- Q. Main Street area?
- A. Well, the Jefferson, Utica, Ferry Street area.
- Q. Was there another one?
- A. No. There had been, there wasn't at that time.
- Q. And what did you personally do in connection with this venture, what were your duties?
- A. Well, they had a printing plant and I went out and solicited the advertising for the papers and wrote the editorial contents and worked in setting the type and running the press and doing whatever had to be done to get the paper out.
- Q. You say they had a printing plant. Where was it located, of what did it consist?
- A. Well, it was located in a house. Tovey lived upstairs. The basement—it was a private dwelling, a three-story building or dwelling, rather, and the basement had a press set up in it, and what used to be the dining room had a linotype machine 1903 in it back in the rear, which was probably—I don't know what the rooms were—they had a type setup where you put the type together, all hand type.
- Q. Then you functioned as a reporter, the editorial writer, and contributed your efforts to the operation of printing, as well?
- A. Right.
- Q. And you also solicited advertising?
- A. Yes, sir.
- Q. And how many presses did you have, just the one?
- A. One.
- Q. The one you referred to?
- A. Yes.
- Q. Did the company buy that new or—
- A. That was there. It was at that time thirty, forty years old. It was a press where they printed four pages at a time on one side of the paper, one sheet at a time, and you had to turn the paper over and print the other four pages on the other side of the paper, and then you had to fold them.
- Q. Without too much detail; the venture, due to your efforts

and probably those of your associates, whom you mentioned began to be successful, did it?

A. Yes.

Q. Did you print legal notices and items of the 1904 character?

A. International Gazette did, yes.

Q. That is the Black Rock neighborhood paper?

A. Right.

Q. Was it, in the course of time, made one of the official publications for the courts in this vicinity for legal notices?

A. The courts used it, I don't think it was ever an official paper, but it was used, as such.

Q. This is a little leading, but I want to get over this preliminary matter. Did the depression help the development of the paper?

A. Yes.

Q. How?

A. About 1927 or late in 1926 the drop in the real estate market came along and there were a lot of foreclosure notices and the advertising in the paper built up as a consequence of that.

Q. And—

A. Later on it got to be instead of four pages it got to be six.

Q. And in the course of time, more than that?

A. I think maybe on occasion it was eight pages.

Q. Did you print such things as bankruptcy notices, judgments, foreclosures?

A. Those kind of things, yes.

1905 Q. Notices of sale—

The COURT: I can take notice of all that. I was in that business as really a fledgling lawyer. I remember the type of competition that existed between International Gazette and the Law Journal, and I remember your man, Cliff Bush, who used to hang around the courts, particularly the County Court where most of the foreclosures were conducted, and it was nip and tuck as to who got the notices. I had something to do with a bank firm at the time, I know it well.

Mr. RAICHLE: We will pass over it quickly.

By Mr. RAICHLE:

Q. In the course of time, did you expand your facilities?

A. Yes. This International Gazette also did printing business. I mean they printed circulars and letterheads, envelopes, all of these things, and with the money we made, which was

made very slowly, we bought a rotary press so that we could print the circulars and, oh, print for customers that had bigger quantities.

1906 Q. Let me ask you; in the course of time did you buy out or cause your family to buy out the interest of Mr. Tranter and the other gentleman to who you referred?

A. Yes.

Q. When were those purchases made?

A. I don't recall the actual years. Charlie Frieberg was going to run for sheriff and needed some money, so he sold his stock for that reason.

Q. What did you pay him?

A. \$25,000, something like that.

Q. Was that after you had been operating for some years?

A. A couple of years.

Q. What did you pay Mr. Tranter?

A. Fifteen I think was the figure we paid him.

Q. You took him out early?

A. He got a job as—or got himself connected with the Courier as managing editor. He wasn't interested too much.

Q. I want to trace the development of this business. You were printing these things that you spoke of, you purchased the rotary press. About when was it you got the rotary press?

A. We purchased that from the Courier Express when they put up the new building, they abandoned the old 1907 building.

Q. What year about?

A. 1929-1930. Maybe 1928.

Q. Did the time come when you moved out of this house—

A. Yes.

Q. Where you had been?

A. Moved over to a building on Hertel Avenue.

Q. And how long did you stay there?

A. Oh, two or three years.

Q. And was the business, in volume, expanding during those years?

A. Yes.

Q. Were you obliged to expand your facilities?

A. Well, in printing the circulars, the people like Kobacker's and Baker's, these people wanted to make them more attractive and wanted to put a little color on them. First of all, we got some facilities to put one color on. We added to them, put two colors on.

Q. When did you start to color print, about when?

A. That came about 1932.

Q. And you say first you had a one-color operation, then subsequently you added to the colors you included in your printing?

A. Right.

Q. Now, how long were you on Hertel Avenue?

1908 A. We were on Hertel Avenue from 1928 or 1929 until 1932. We moved to Niagara Street. That is the time we put the four-color press in.

Q. That was the time you what?

A. Put in the four-color press.

Q. Where did you get that press?

A. From the Syracuse Herald.

Q. And in what year?

A. 1932-'33.

Q. When did you first begin to print colored comic features?

A. At that time. When we bought the press from the Syracuse Herald we began to print the comic sections.

Q. With whom did you do business at the Syracuse Herald?

A. With a man by the name of Edward E. A. O'Hara.

Q. Tell us, in your own words, how the printing of colored comic features developed from that point over the next few years?

A. Well, we began to print the comics for the Syracuse Herald. Bud O'Hara was a friend of the Connors family in Buffalo, that was the second job we got, and he helped us—recommended us to print the comics for the Courier. Then we got a job in Chicago, called the Chicago Sun Times or—I beg your pardon, it was the Chicago Times in those days, and then 1909 it went on from there and we picked up—I can't remember the order on them—but every year or two we would get a couple of jobs, sometimes more.

Q. Were these jobs, including the Syracuse paper and the Buffalo paper, instances where the papers had theretofore done their own coloring printing where the comic features were concerned?

A. Most all of the jobs we got were jobs from newspapers that printed their own comics.

Q. But I mean you started with the Syracuse paper, followed with the Buffalo paper and the Chicago paper, were those three papers, for example, papers which theretofore printed their own color comic sections?

A. That is right.

Q. As your business grew during the 1930's, and for that matter, into the '40's, did you employ salesmen to sell your printing to such papers and to persuade them to cease printing their own color comic sections and give the business to you, or did you solicit that business, or both?

A. Well, both. I solicited and Kenneth did.

Q. Who is Kenneth?

A. My brother. We had a fellow by the name of O. L. Hershiser.

Q. How long did the plant remain on Niagara Street?

1910 A. Four years.

Q. That would bring us up to what?

A. 1936.

Q. Where did you move your facilities at that time?

A. We moved to Groat Street.

Q. Is that where you are now located?

A. Yes.

Q. And what did you have at Groat Street in the way of facilities, not in detail, but in outline, at the time that you—

A. We bought a new Goss press.

Q. Is that particularly adaptable to the printing—

A. Yes, built especially for printing comic sections.

Q. And approximately what would that cost, or did it cost?

A. It cost \$36,000.

Q. And since that time and down to the present, speaking of the Groat Street operation, the Groat Street plant, have you expanded your facilities?

A. Yes. We have created a—set up a plant in Dunkirk, New York; one in Lufkin, Texas; one in Sylacauga, Alabama; and we have purchased—

Q. I will get to those in a minute. I wanted particularly to know, did you plough back the money that you made through operational earnings into the plant on Groat Street?

1911 A. All of it.

Q. And from your early beginning, which you have told us about, down to date, have you financed, for the most part, your Groat Street operation through the redeployment of the money, ploughing it back, as the banker says, into the business?

A. Right.

Q. And over this period of time, during his lifetime, was your father active in the business?

A. Yes.

Q. In what capacity?

A. Well, he was a printer—he was not a printer by trade, he learned to be a printer. He was a tool and die maker by trade, and he was very helpful in designing machinery and rebuilding it, and those were the things that were very important to us.

Q. When did your father pass away?

A. 1951.

Q. Has your brother Kenneth been active in the business?

A. Yes.

Q. Grown up in it with you?

A. When we were operating on Niagara Street, our first plant, he was going to school and he used to come over after school and work there.

Q. Were other members of your family active in the 1912 business?

A. Yes. I used to get my sister to help me, and the lady who is now my wife used to come in and help out in the mechanical end, stuffing papers, folding them, things like that.

Q. That was more so in the early days?

A. Yes.

Q. As the business expanded, as the facilities expanded, as the number of employees increased, did they all continue to help?

A. Yes, they all worked.

Q. Throughout many years?

A. In overalls.

Q. At Groat Street, your plant here in Buffalo, how many presses do you have?

A. Three.

Q. When did you open the plant in Dunkirk?

A. 1947.

Q. And did you continue to print in Buffalo and in Dunkirk these comic sections?

A. Yes.

Q. There has been so much talk in this case, and properly so, necessarily so, about the printing of comic sections for newspapers. Were you also, through these many years of your development, increasing what we might call your commercial printing business?

A. Yes.

Q. And as of recent years, the last ten years, what does that consist of? Just give us an example of what you print, other than comic sections for newspapers?

A. Well, we print supplements that go in newspapers, and go through the mail, for Sears Roebuck, Montgomery Ward, W. T. Grant Company, Kresge's, Woolworth's, substantially every nationwide organization.

Q. And you say sections for newspapers; do you also print circulars for their use, other than through newspapers?

A. Yes. These sections that I talk about are circulars inserted in newspapers. We call them newspaper sections, actually they are circulars.

Q. All right. Is that what you generally refer to as commercial printing?

A. Yea.

Q. Do you print catalogs or anything of that kind?

A. Yes.

Q. Those do not go through newspapers?

A. They go through the mail.

Q. Do you have a substantial volume of that kind of printing?

A. Yes.

Q. I mean unrelated to newspapers?

A. Unrelated to newspapers.

1914 Q. Is that today, and has it been over the last many years, a substantial portion of your business?

A. I think presently it represents at least thirty percent of the business, probably more.

Q. Of your overall volume in all these plants to which you have referred?

A. That is right.

Mr. BERNSTEIN: Excuse me, I didn't hear the question. Would you repeat it?

(Thereupon the last question and answer was read by Reporter.)

By Mr. RAICHLE:

Q. To make it clear, what I am getting at, what you are now referring to is business unrelated to newspaper circulation?

A. Yes.

Q. Now, when did you first begin to have contact with King Features or NEA or any of these purveyors of features? By

contact, I mean just what I say, when were you conscious of their activities?

A. Oh, I think we printed some sections for NEA for the Buffalo Color Press here, or what was the Buffalo Color 1915 Press, back in the late '30's; '38, '39 and through the forties.

Q. When did you first have any contact with the Hearst organization, King Features?

A. The first time we actually printed anything for them I think was in the early '50's, 1953. But they were around trying to get us to print things always, during the forties and late thirties and—

Q. Now, who have been in the industry printing, name some of the others in the same line of business as yourself.

Mr. BERNSTEIN: Could we get a period of time?

Mr. RAICHLE: I will fix it up as to time.

By Mr. RAICHLE:

Q. Well, go back in the forties, who was there?

A. World Color Printing Company, Eastern Color Printing Company, Star Color Printing Company, I think were in business then. Those were the important ones.

Q. Are they still in business?

A. Yes.

Q. And have been during these years?

A. Yes.

Q. To which you referred?

A. Yes. International Color Printing Company, of course, King Features.

1916 Q. Was there one called Acme?

A. Yes, they were in business then and are now.

Q. They are located where?

A. In San Bernadino, California.

Q. Where is Eastern Color Printing located?

A. In Waterbury, Connecticut.

Q. And more recently has there been another one added called—

Mr. BERNSTEIN: Your Honor, I object to the leading.

Mr. RAICHLE: All right.

The COURT: It must be knowledge of fact in the industry.

Mr. RAICHLE: The one we have had discussion with, the one

Mr. Hornady went to work for.

Mr. BERNSTEIN: I have no objection to this particular question. I think now that we have gotten through the preliminaries, I think at this time we should switch from our leading questions.

The COURT: I know about Hornady's company. This is just old hat. Is there another one by Hornady?

The WITNESS: Southern Color Print.

By Mr. RAICHLE:

1917 Q. Where is that located?

A. In—

Q. Norfolk?

A. Adjacent to Norfolk.

Q. Newport News?

A. Newport News.

Mr. RAICHLE: I know I am a little repetitious, but I was thinking of the record and—

The COURT: It is all right. I don't think there is any harm in leading at this time. This is ancient history.

Mr. RAICHLE: I announced it was leading.

The COURT: Fine.

By Mr. RAICHLE:

Q. Now, let's talk a little bit about the establishment of some of these plants of yours, like Lufkin, Sylacauga, and later on about the acquisition of International Color Printing—

The COURT: Mr. Raichle, there is one thing I am interested in. Mr. Koessler has apparently something to sell, particularly to newspapers who were printing their own, and you were able to persuade a number of them to give up that work. I 1918 am just casually interested, at least, in what did you have to sell that they could not contend with nicely themselves? Was there a problem in a newspaper printing its own as against what you could do for them?

The WITNESS: Our only thing to offer them was a lower price and a better job.

The COURT: I remember some testimony, I think, in this case, that it is an unusual chore for a newspaper to run its own color printing, is that correct? It isn't real newspaper work, it is kind of a collateral thing?

The WITNESS: They had to have a special crew in those days to run it, which was—it was a little different than the run of the mill, and it was a labor problem with them, and it was more

expensive than we could do it. That is why they bought our product.

By Mr. RAICHLE:

Q. Developing what the Court has in mind; there has been testimony here that any newspaper can print its own?

A. That is right.

Q. And is that the fact?

A. That is a fact presently.

Q. And have some newspapers, which have ceased printing their own and on occasion had you print for them, gone back to printing their own?

A. Yes.

Q. And can any newspaper readily enter the market?

A. They can.

Mr. BERNSTEIN: I object, your Honor.

The COURT: Overruled. He should know, he is in the business.

Mr. RAICHLE: I might say that that was testified to by witnesses on the occasion when we had a hearing in connection with the temporary injunction.

Mr. BERNSTEIN: My objection does not go to the substance of the question, it goes to the form of the question.

The COURT: Overruled. I am sorry to interrupt, I wanted to get exactly from this gentleman what he had to sell to the newspapers at that time.

1920 Q. Is it a form of know-how; what is it?

A. It is a form of know-how. In later times we developed better machinery, better machinery than the printing press manufacturers put on the market. Better methods of doing it so that we cut the costs and were able to compete on costs. We were also able to compete on quality, we did a better job, and we could print—we were more flexible, that is, a lot of the newspapers could print eight pages or twelve pages but they could not print ten pages or fourteen pages.

Q. What is the conventional number of pages used by most of them?

A. Well, in the early times, it was eight or twelve or sixteen. We developed machines to print ten, fourteen, the intermediate number of pages.

Q. Now, let's draw your attention to the Lufkin story. How did the construction of a plant by you in Lufkin come about?

A. We had accounts down there.

Q. What?

A. We had accounts that we were printing up in Dunkirk and in Buffalo for Texas.

Q. When you say you had accounts, you mean were printing for newspapers located in the southwest?

A. That is right.

1921 Q. Can you give us the names of some of those papers?

A. Yes. The Dallas News, the Houston Chronicle, the San Antonio Express, the New Orleans Times Picayune, the Memphis Commercial Appeal.

Q. Were those papers, which you have just mentioned as among those for whom you were printing in the southwest, papers which had formerly printed their own?

A. The Dallas News printed their own, the Houston Chronicle printed their own, the Memphis Commercial Appeal printed their own, the New Orleans Times Picayune, all the four I have mentioned did, yes.

Q. And they became customers of yours?

A. Yes.

Q. Prior to the time when you built the Lufkin plant?

A. Right.

Q. Then will you tell us the considerations that went in to the building of the plant or the erection of the plant, the locating of the plant in Lufkin, Texas?

A. Well, we thought that was a good place to build a plant, establish a plant, and make some money.

Q. And did you feel you could better serve the area with a plant located there than one located in Buffalo?

A. Yes.

1922 Q. Why?

A. It saved a tremendous amount of transportation cost.

Q. And when did you first begin to think about the plant, give serious consideration to building a plant there?

A. In 1952 or 1953 we thought about it, but we began to do something about it in those times.

Q. I am sorry.

(Thereupon the last answer was read by Reporter.)

By Mr. RAICHLE:

Q. Was this a calculated business risk?

A. It was.

Q. Was the plant located in proximity to a paper mill?

A. Yes.

Q. Was the location of the source of supply of print a consideration which—

A. Yes.

Q. —you took into consideration?

A. That is right.

Q. Now, did anybody, King Features, NEA, or anybody else assure you of business if you would build such a plant?

Mr. BERNSTEIN: I object.

1923 The COURT: Overruled.

The WITNESS: No.

By Mr. RAICHLE:

Q. Did King Features or NEA or anybody contribute money or encouragement to the building of the plant?

A. No.

Q. Was it the proximity to the source of supply and the belief that you could generate business through the savings of transportation costs that moved you to do it?

A. Yes.

Q. Do you recall approximately how much money you spent in erecting, equipping, and completing the plant at Lufkin?

A. More than two million dollars.

Q. Where did the money come from?

A. It came from the earnings of the operations of the Buffalo plant and Dunkirk.

Q. It was a capital investment by Greater Buffalo Press?

A. All except the building. The building—the Southland Paper Company financed the building and the land, and we paid that off, paid them back.

Q. Over a period of time?

A. Yes, over five years, I think it was.

1924 Q. Now, after this Lufkin plant was opened—by the way, when was it opened, when did it commence operation?

A. Started operations in 1958.

Q. What additional business did you develop for the plant? Can you remember the names of some of the additional sources?

A. Well —

Mr. BERNSTEIN: I object to the form, your Honor, on the grounds this assumes that the witness has testified as to what business he had in the plant at the beginning, he said additional. I haven't heard any testimony concerning what busi-

ness was in the plant when it opened. The witness' testimony, as I understand it, was that he was printing for certain newspapers in the south and that is what gave him consideration as to opening the plant. I didn't hear testimony as to what runs were in that plant when it opened.

Mr. RAICHLE: Well, let's take it your way.

1925 By Mr. RAICHLE:

Q. When the plant was opened, ready for operations, what accounts, to use your word, did you print there?

A. Well, there was the Dallas News, the Houston Chronicle, the San Antonio Express, we brought some of our business from Buffalo down there, the Kansas City Star from Dunkirk, the St. Louis Globe Democrat, the Shreveport Times, all the Harte-Hanks Newspapers, the New Orleans Times Picayune—

Q. Now let me ask you this; did you also have commercial business, as we have used the term?

A. Yes.

Q. In Lufkin?

A. Yes.

Q. And for whom did you print, after the plant opened, in the commercial field?

A. Oh, the same kind of people. One of the accounts down there was the White Auto Stores. Printed stuff for them down there.

Mr. BERNSTEIN: What stores?

The WITNESS: White Auto Stores.

By Mr. RAICHLE:

Q. What is their business?

A. They run a chain of automobile stores, like West-
1926 ern—

Q. What kind of printing did you do for them?

A. Commercial printing.

Q. Unrelated to newspapers?

A. Yes. We print circulars for Sears Roebuck, Grants, everybody down there.

Q. In the Lufkin plant, as well as elsewhere?

A. That is right.

Q. Now, I show you a paper—I will ask the Clerk to mark it.
(Thereupon document referred to was marked Defendant's Exhibit D-1 for identification.)

By Mr. RAICHLE:

Q. Is this a list you made up for me showing the contacts or the accounts which you had from papers in the southwest prior to the opening of the Lufkin plant, and following it, those that you procured for the plant after the opening of the plant?

A. Right.

Q. And then on the second page is there a list of orders placed by Hearst and King Features at Lufkin after the plant opened?

A. Yes.

1927 Q. And then the last one lists some accounts which you took from King Features after the opening of the plant?

A. That is right.

Mr. RAICHLE: I offer that in evidence.

Mr. BERNSTEIN: Your Honor, we have no objection to its receipt in evidence at this time, subject to a motion to strike after we complete the cross examination to determine the accuracy. I haven't had a chance to check it or review it.

The COURT: You offer that in evidence?

Mr. RAICHLE: Yes.

The COURT: Received; subject to that statement.

(Thereupon Defendant's Exhibit D-1, previously marked for identification, was received and marked in evidence.)

Mr. RAICHLE: Would your Honor like to look at it?

The COURT: Not now. What does it purport to be?

1928 Mr. RAICHLE: A list of newspapers for which he was printing colored comic sections in the southwestern part of the country before the opening of the plant. He was doing the printing at Buffalo or Dunkirk. Then a list of those he was able to procure after the plant opened from the newspapers in that general area, and then the last is a list of those which he took by competing with King Features after the opening of the plant and printed in Lufkin.

Mr. BERNSTEIN: Could we arrange to get a copy of that?

Mr. RAICHLE: You may have this.

Mr. BERNSTEIN: Thank you.

The COURT: Make a copy for Mr. Bernstein now.

Mr. RAICHLE: Your Honor, may I speak with Mr. Moore for a minute?

The COURT: Yes.

By Mr. RANCHLE:

Q. You spoke of the paper company helping to finance your building down there in Lufkin, right?

A. Yea.

Q. And do you know whether the paper company had made the same offer or similar offers to other printers?

A. Made a similar offer to Acme Color Printing Company.

1929 Q. And Acme did not take advantage of the offer?

A. No.

Q. Now, did you, in advance of embarking upon the Lufkin venture, disclose your intentions to either King Features or NEA?

A. No, we tried to keep the knowledge from them.

Q. Can you give us any figures on the transportation savings to newspapers consequent upon the Lufkin location?

A. I had Mr. Hammond work up these figures, and he approximates that each year we save the newspapers down in Texas a half million dollars in transportation alone, as against printing those sections in the Buffalo-Dunkirk area, so that in ten years it adds up to about five million dollars.

Q. Are all those savings passed on to the various newspapers?

A. Those are passed on to the newspapers, all of it.

Q. Is the commercial business, as distinguished from the newspaper comic sections, a business growing year by year?

A. Yes.

Q. In Lufkin?

A. In Lufkin and elsewhere.

Q. In your other plants as well?

1930 A. Yes.

Q. Now, let's go from Lufkin to Sylacauga. We all know, and we have had much discussion, about a plant in Sylacauga. When did you first give consideration to the building or erection and equipping of a plant in Sylacauga, Alabama?

A. Sylacauga or the south?

Q. In the south?

A. In 1947.

Q. And what took place in 1947 in that connection?

A. Well, we thought that the south—they call it the deep south down there—was a good place for a printing plant, there was none there.

Q. Again, why did you think it was a good place?

A. Because there was—we would save transportation and—

Q. Save it for whom?

A. Save it for the newspapers.

Q. You mean the newspapers located in the deep south?

A. There was no color plant in the deep south.

Q. The saving would be for—

A. For the newspapers in the deep south, yes.

Q. And what did you do back in 1947 in that connection, if anything?

A. Kenneth Koessler made a tour of the south, substantially all of the south, with the president—with the representative, rather, of Buffalo Color Press, which was owned by NEA. This representative of the Buffalo Color Press made the trip with Kenneth under the direction of the President of NEA, a fellow by the name of Ferguson, Fred Ferguson, and the idea was that NEA and Greater Buffalo were going to cooperate in building and establishing a plant in the deep south, a color printing plant.

Q. There was some thought of a partnership in that venture?

A. Right.

Q. Did that ever come about?

A. No.

Q. Was the idea then, a participation by NEA in the construction or equipping of such a plant, completely abandoned?

A. Yes. Mr. Ferguson, the President of NEA, came down to Buffalo and he heard what Kenneth and Mr. Leon Herman had to say—

Q. Leon Herman being the man that went—

A. From the Buffalo Color Press. Their suggestions as to where the plant should be located, how much it would cost, how long it would take to get it on a paying basis, and Mr. 1932 Ferguson said that he didn't want to invest NEA's money in it.

Q. There is no joint venture in that connection?

A. None.

Q. Then when did you next give consideration to a plant in the south, or did you continue from that day forward to so consider?

A. At that time, in 1947-1948, the news print shortage developed, a very acute one, so that it wasn't possible to locate a plant in that area at that time because you could not get news

print. The news print came from the north and the southern papers and all other papers were buying every pound of it they could to print out the black sheets, the newspapers. We gave no thought to it, we transferred our plant to the southwest, where they had a news print industry.

Q. That was the Lufkin venture you have told us about?

A. Right. Then in 1953, I think it was, or in 1954, a fellow by the name of—in the meantime, a news print industry had developed in the south, started in 1950, I think, and by 1954 or 1953 they were operating—and a fellow by the name of Ralph Watt, the name of this paper company was the Coosa River Paper Company, it was part of the Kimberly Clark paper organization, and this fellow—

Q. Excuse me, did you have some talk in November 1933 of 1950 with the Journal Constitution of Atlanta, a newspaper, in connection with building your plant in the south?

A. That is one of the reasons why we wanted a plant in the south, we had some business there. One of them was the Atlanta Journal.

Q. Is this a copy of a letter you wrote to Mr. Powell, the Business Manager of the Journal? I will show you this in a minute?

A. I wrote that letter.

Mr. MOORE: It was marked in the application for a preliminary injunction, Exhibit D-5.

Mr. RAICHLE: I will offer it as an exhibit.

Mr. BERNSTEIN: No objection.

The COURT: Received.

The WITNESS: We had other business in the so-called deep south. We had the Nashville paper, the Mobile paper, the Miami paper.

(Thereupon letter referred to was marked Defendant's Exhibit D-2 and received in evidence.)

Mr. RAICHLE: May I read this to your Honor?

1934 The COURT: Yes.

Mr. RAICHLE: It is dated November 24, 1950. "Mr. Horace Powell, Business Manager, Journal Constitution, Atlanta, Georgia. Dear Mr. Powell: This is to confirm our recent conversation with respect to the establishment of a southern comic printing plant in the event of your acceptance of our direct proposal to produce comic sections for the Journal Constitution. Present conditions of the newsprint market and build-

ing industry make it impractical if not impossible to launch such a project at this time. However, we will agree to get started on such a plant within one year after newsprint becomes available in the south, at the contract price and any building restrictions imposed by the Federal Government, because of war or defense needs have been canceled. The object of establishing such a plant would be to materially reduce transportation charges on your comics, as well as those which we are printing or would be printing for other newspapers in the south. It is difficult to specifically define such a program, but our intention would be to establish the southern plant at the earliest possible practical time. With thanks for your kindness and consideration during our visit. I am, sincerely, J. W. Koessler, President."

By Mr. RAICHLE:

Q. So that back in 1950, as well as in 1947, you were planning, when the opportunity presented itself and conditions were propitious, to open a plant in the deep south?

A. Yes.

Q. You were telling us about a man from the Coosa River Development Company talking to you and, if you would, fix the time again and continue your testimony on that subject; if you will?

A. This was in 1954, and he was the general manager, I think, and vice president of this Coosa River Paper Company. He came to Buffalo and said that the Coosa River Paper Company at that time had plans to increase their production, to put in an additional news print machine, and that he was looking for news print business to fill that mill up. He wanted to know if we would be interested in establishing a printing plant in the vicinity of that mill, under a plan similar to the one that we had established in Lufkin, and I told him yes, we would.

Mr. BERNSTEIN: I believe the witness testified that the Lufkin plant was in 1958. Do I understand the witness' testimony; is he quoting Mr. Watts in 1954?

The COURT: Clear that up.

The WITNESS: Our plans for Lufkin started in 1954. We actually didn't get the plant running until 1958.

By Mr. RAICHLE:

Q. Had you acquainted this gentleman with your plans in that regard?

A. He had known about it, the industry picked it up.

Q. He represented a paper mill, you were planning with a paper mill in the southwest—

A. Yes.

Q. In Lufkin?

A. Yes.

1937 Q. And your plans in Lufkin preceded by many years the actual completion of this plant?

A. Right.

Q. These things don't come about in a day?

A. No.

Q. Now then, continue with Mr.—the man from—

A. Ralph Watt of the Coosa Paper Company?

Q. No, you were talking about the gentleman from the other company?

A. Ralph Watt.

Q. Ralph Watt, I seem to have trouble with that name. What was the name of his company?

A. The Coosa River Paper Company.

Q. All right. Go ahead.

A. I told him that we were interested in such a plant, we had entertained the idea for some years prior. He said he would report that to his people. We talked about—he would put up a building, this was his proposal, he would put up a building, and he would sell the paper under the so-called market in that he would allow us some of the transportation that otherwise would have gone into delivering newspaper to the newspapers.

Q. Let me make that clearer, if we can. He would deliver the newsprint to your plant?

1938 A. Yes.

Q. In proximity to his mill?

A. Yea.

Q. Which turned out to be Sylacauga?

A. Right.

Q. Then you would deliver to the newspapers—take one as far away as Miami, as far from Sylacauga as Miami—that he would then absorb the cost of your delivery to Miami?

A. Not all of it, as much as it would have cost to ship the white newsprint down there.

Q. In other words, he would quote you a price, deliver his newsprint to you at a price which gave effect to what it would

have cost him to ship the newsprint to Miami in the given instance, right?

A. As it worked out, it didn't work that way.

Q. Tell us how it did work?

A. He would sell us the newsprint at the market price, he would allow the newspapers this differential, directly to the newspapers.

Q. That is how the savings was accomplished for the newspapers?

A. For the newspapers. Not for us, but the newspapers.

Q. And all of the savings in that manner were passed on to the newspapers?

1939 A. Yes.

Mr. BERNSTEIN: Excuse me, Your Honor. Mr. Raichle said "were passed on", I gather this was a proposed plan, it was not put into effect, is that correct?

By Mr. RAICHLE:

Q. Subsequently was that plan put into operation?

A. This was a plan proposed and discussed with Mr. Watt and myself and when we got in the Sylacauga plant we put it in effect or made the paper company put it in effect.

Q. So that the plan, in substance, was carried out?

A. Yes, since we have been there.

Q. To answer Mr. Bernstein's question; it was not only the plan, it was the accomplishment?

A. Right.

Q. Now then, when did you build the Sylacauga plant?

A. Well, we started that—sort of hazy when we started it, we didn't get it opened until 1963—I think about '58, '59, around there, we started that.

Q. All right. How was it financed?

A. It was financed by Greater Buffalo Press.

Q. Did the paper company build the building?

A. No.

1940 Q. Did you?

A. Yes.

Q. By the way, so we get the hierarchy of the plant structure correct, what is the name of the entity brought into existence to own the Sylacauga plant, Dixie Color?

A. Dixie Color Printing Company is the name of the company.

Q. That is a wholly owned subsidiary of Greater Buffalo?

A. Yes.

Q. In the case of Lufkin, what entity owns the plant?

A. I think the Southwest Color Printing Company is the name of the company.

Q. Is that a wholly owned subsidiary of Greater Buffalo Press?

A. Yes.

Q. Getting to Sylacauga again; approximately how much has Greater Buffalo Press invested in the Sylacauga plant through Dixie Color Printing Corporation?

A. I haven't got the actual figures. I think at the present time it is close to two million dollars.

Q. Is the Sylacauga plant modeled after the design of the Lufkin plant?

A. Yes. The machinery is designed after the machinery in the Lufkin plant.

Q. Are the machines built or rebuilt in accordance with—what shall I say—your building for Lufkin?

A. Yes, the same design, the same ideas that we had in Lufkin we put into Sylacauga.

Q. Now, how many people are employed at the Sylacauga plant, approximately?

A. About 75.

Q. Can you give us any idea of the saving that has been accomplished for the newspapers served down there?

A. Yes. We figured we have saved a quarter of a million dollars in transportation alone each year it has been there.

Q. For the newspapers?

A. For the newspapers.

Q. Your newspaper customers, for whom you print?

A. That is right.

Q. How much newsprint do you consume down there in a year?

A. Approximately 15,000 tons.

Q. At a cost of about what?

A. The present price is \$143 a ton.

Q. Did King Features or NEA, or either of them, in any way assist or encourage you in the building of this plant in Sylacauga?

A. No.

Q. Were you guaranteed any business by either of
1942 those outfits if you would build such a plant?

A. No.

Q. Did the idea or thought of building the plant in Sylacauga come to you through either of those two organizations?

A. No. I think there should be some explanation of this. My wish to build a plant—my thought was not to build it in Sylacauga, it was to build it in Chattanooga, in that vicinity.

Q. Why did you change to Sylacauga?

A. We changed out of deference to the opinions of Joe Gorman because Joe carried on some—

Q. At any rate, Mr. Gorman—

Mr. BERNSTEIN: I object. May the witness finish the answer, please?

Mr. RAICHLE: I thought he had. Had you finished?

The WITNESS: Joe Gorman talked to the people in Sylacauga, the Chamber of Commerce people, like that, and he thought he owed them some obligation to do something for the work they had put into it.

By Mr. RAICHLE:

Q. All right. Was this a calculated business risk, this 1943 construction of a plant in Sylacauga?

A. Yes, very definitely.

Mr. RAICHLE: Would you mark this? I might as well do it with one operation. I am going to offer this in evidence.

By Mr. RAICHLE:

Q. Is this a list of the accounts or newspapers for which you printed at Sylacauga, in the first instance, those which originated with Greater Buffalo Press?

A. Yes.

Q. And following, on the second page, a list of the accounts supplied to you by King Features?

A. Yes.

Q. And then there is a third list, those of NEA?

A. That is right.

Q. All of those on both lists being printed at Sylacauga?

A. Yes.

Mr. RAICHLE: I offer that in evidence.

Mr. BERNSTEIN: Pardon me. I heard Mr. Raichle say Buffalo Color Press; do you mean Greater Buffalo?

Mr. RAICHLE: I thought I said Greater Buffalo, I intended

to. I thought I said Greater Buffalo Press, I intended to.
 1944 (Thereupon documents referred to were marked Defendant's Exhibit D-3 and received in evidence.)

Mr. BERNSTEIN: Subject to Plaintiff's motion to strike, your Honor.

By Mr. RAICHLER:

Q. Something was said early in the case in some affidavit or paper that sticks in my mind, that Hearst once had a contract with the Coosa River organization to which you have referred?

A. Yes.

Q. Did you ever have anything to do with that contract?

A. No.

Q. Was it ever assigned or sought to be assigned to you or anything of that kind?

A. No.

Q. And did you ever derive any benefit or advantage from it?

A. No, sir.

Q. Is your contract entirely different from that contract?

A. Yes.

Q. Now, at Sylacauga, do you own the building?

A. Yes.

1945 Q. I think we developed that before, didn't we? Now, does Sylacauga also do commercial printing?

A. Yes.

Q. Of the kind and character and for some of the same customers you heretofore mentioned when you were talking about Lufkin and Buffalo?

A. Yes.

Q. Sears Roebuck, et cetera?

A. Yes.

Q. Is a substantial portion of the Sylacauga printing over the years, since it has been opened, commercial printing?

A. Yes.

Q. Did you get any help of any kind or character from either King Features or NEA in building or preparing for operation the Sylacauga plant?

A. No, we did it all ourselves.

Q. That is the same in the case of Lufkin?

A. Yes, sir.

Q. Now, we go to another subject, the acquisition of International Color Printing Company. How did it come about—strike that out. When did you first give consideration to the

purchase of International Color Printing Company? About when?

A. Oh, we thought after we developed this new machinery in 1946 that we could make International Color Printing Company into a paying—we never thought it was—we thought we could make it into a paying organization by putting our ideas, our mechanical ideas and machinery there.

Q. You, of course, knew of International Color Printing?

A. Yes.

Q. And did you know whether International Color Printing was printing exclusively for one outfit?

A. Yes.

Q. And for whom was it exclusively printing?

A. King Features.

Q. Prior to the time when you acquired International Color Printing, was International Color Printing soliciting any newspapers?

A. No.

Q. In other words, it was not engaged in the same activity you were engaged in?

A. No, it was strictly a contract printer for King Features.

Q. In other words, it was not a competitor of yours?

A. No.

Mr. BERNSTEIN: I object, your Honor.

Mr. RAICHLE: He knows who his competitors are.

Mr. BERNSTEIN: I object to the form of the question.

The COURT: Overruled.

1947 By Mr. RAICHLE:

Q. Was International a competitor of yours?

A. No. Our competitor was King Features.

Q. Of course, in the east you had Eastern Color Printing, did you not?

A. Yes.

Q. And they solicit the same type of accounts you do?

A. Yes.

Q. That is, Eastern Color Printing does?

A. Right.

Q. And they are in business today, continuing their activities?

A. Yes.

Q. Do you know whether on occasions they also printed for King Features, or don't you know about it?

A. I don't know. I know they took some business away from King Features. I don't know whether they printed anything from them.

Q. Eastern Color Printing was and is a competitor of yours?

A. Yes.

Q. Now, continuing with the matter of International Color Printing Company. Did there come a time when you had a talk with Mr. Gorman concerning the possible purchase by you of International Color?

1948 A. Yes.

Q. And who is Mr. Gorman?

A. He is the—he was at that time the general manager of International Color Printing Company. Whether he was an officer of the company, I don't know.

Q. Who owned—

A. He ran it.

Q. Who owned International Color Printing Company?

A. A family by the name of Govin.

Q. G-o-v-i-n?

A. Right.

Q. And, to your knowledge, had they been printing, that is, had International Color Printing been printing for Hearst or King Features for a long period of time?

A. Yes.

Q. Now, what did you learn from Mr. Gorman?

A. I learned that he was sort of unhappy with his customer, King Features, for one thing.

Q. I mean more particularly about the possibility of a sale by him and an acquisition by you of the plant?

A. He said that they were not making money or making very little, that the owners would sell if they could get a decent price for it.

Q. What did you say?

A. I asked him what a decent price was, what he thought.

1949 Q. What did he say?

A. Well, he said they ought to get the net worth, at least, of the company.

Q. Net worth per book?

A. Right.

Q. Give us the conversation, the substance of it?

A. And I asked him to tell me what it was and he said he would, and I said we would likely be interested in buying on that basis, I would have to know what the net worth was. He said he would find out what it was on their books and he would let me know. He did some time later, he informed me of what the net worth of the company was as shown on their book, and I said on that basis we would be interested in buying it.

Q. What was the net worth, what did you pay for it?

A. Approximately \$575,000.

Q. Did you buy the assets or the stock?

A. Bought the stock.

Q. All of the stock?

A. Yes.

Q. And thereupon International Color Printing became a subsidiary, a wholly owned subsidiary of Greater Buffalo Press?

A. I think that is the setup.

1950 Q. Did you make some sort of a study or inform yourselves about the cost of operations, operating figures, to reach a conclusion as to whether you could have a profitable operation?

A. Yes. The business they printed—a big percentage of the business they printed for King was business that required a large number of plate changes, a large make-ready, a large volume of make-ready, and I thought with our system, our methods we had developed, it would eliminate that large percentage of that make-ready and therefore reduce their printing costs and permit us to make a profit.

Q. How did the price which you obtained for the printing after your acquisition compare with the price which International was receiving at the time of the purchase?

A. It was exactly the same price, exactly the same contract that International had for a period of I don't know how many years; many, many years.

Q. As far as price is concerned?

A. As far as price is concerned, and everything else, I guess.

Q. Did King Features or, for that matter, NEA or anybody else assure you in any way a continuance of any particular volume of business if you made the acquisition?

A. When we bought the company that contract had 1951 six months to go.

Q. Answering my question directly; did King Features directly or indirectly, or did NEA directly or indirectly,

assure you of any volume of business or item of business if you made the acquisition?

A. No.

Q. Did either of those organizations, or anybody representing them, seek to prevail upon you to purchase International Color Printing or make the acquisition?

A. No.

Q. Do you know whether International Color Printing, the business, the stock, had been offered to Hearst, to King Features?

A. I know it had been offered to Hearst and King Features is a part of Hearst.

Q. Prior to the time that—

A. Prior to the time we purchased it.

Q. Did you have any agreement with King Features or anybody else to extend any printing contract then in existence?

A. No.

Q. Has the commercial business, as we have been using the term here, distinguished from the newspaper printing, been an important and substantial part of the business volume at the plant since your acquisition of International at Wilkes Barre?

A. Yes.

Q. And when I say commercial, I mean the circulars and the catalogs and the type of things we have mentioned before, for Sears and others?

A. That is right.

Q. Did it have that type of business at the time of your acquisition?

A. No.

Q. Is that business, that kind of business, this commercial business, business you developed for International after your acquisition?

A. Yes.

Q. In addition to the commercial business, has Greater Buffalo Press furnished to International at Wilkes Barre newspaper comic section printing business?

A. A large amount of it.

Q. From accounts originated and obtained by Greater Buffalo Press?

A. Right, accounts that belonged to Greater Buffalo Press.

Q. Other than any business that came from King Features?

A. Yes.

Q. This was business that could be printed at Buffalo?

A. Yes.

1953 Q. And before its transfer to Wilkes Barre, had been printed?

A. Had been printed in Buffalo and Dunkirk.

Q. Now, in the early days of this litigation there was much talk about the union, fears of the union that if any business were transferred to Sylacauga there wouldn't be work for the union employees at International. Is the plant now operating at substantially its capacity?

A. It is operating at its capacity, with a great volume of overtime.

Q. So far as you know, the union is happy now?

A. The union is very happy.

Q. And—

A. As happy as unions can be.

Q. Let me put it this way; the fears of the closing of the plant and the layoffs have not eventuated?

A. (No response.)

Q. The fears that were entertained, at least expressed, have not—

A. No.

Q. Have not been justified by occurrence?

A. No.

Q. Now, is the operation of the plant at capacity accounted for in any part by this commercial printing we have referred to?

A. Yes.

Q. And in substantial part by the—strike it out. And in part by the work transferred from Buffalo?

A. Right, sixty percent of it, as I remember the figures.

Q. Sixty percent of the volume currently produced at the International plant in Wilkes Barre is business that Greater Buffalo Press has originated other than King Features business?

A. Right. King Features exists by virtue of the fact sixty percent of the business they now have was put there by Greater Buffalo Press.

Q. You say King Features, you mean International?

A. International Color Printing Company.

Q. Exists?

A. Yes.

The COURT: I assume there is some advantage in doing the work in Wilkes-Barre, I suppose?

The WITNESS: We had a large amount of business that can be done there as advantageous as it can be done anywhere else, so we put it there.

The COURT: You got a good labor pool there, and an anxious labor pool?

1955 The WITNESS: That is right. They are all working.

The COURT: I think we should recess now.

(Thereupon the court was in recess at 11:35 a.m.)

(Proceedings resumed pursuant to recess, commencing at 11:55 a.m.)

By Mr. RAICHLE:

Q. Mr. Koessler, does the commercial work that you have been describing, as distinguished from the newspaper supplements, require, for instance, an art department, an engraving department, mat making department, composing room, and so forth?

A. Yes.

Q. And also a bindery?

A. Also a bindery.

Q. What other facilities?

A. Well, quite a sales force, for one thing.

Q. To get the business?

A. Yes.

Q. Does International have any of those —

A. No.

Q. Items?

1956 A. No.

Q. And does it rely on the Buffalo Art Department, Engraving Department, mat making, and so forth?

A. We produce all the art, all the composition, all the engravings, all the mats, all the services that are required to produce this commercial printing for International and for Dixie and for Sylacauga.

Q. But such facilities are not located in Wilkes-Barre?

A. They are all located in Buffalo and Dunkirk.

Q. And that part of the work is done and the product is shipped to Wilkes-Barre for the printing?

A. Right.

Q. Now, was the working capital of International Color Printing Company impaired at the time you purchased it?

A. They were minus \$107,000 in current assets.

Q. Versus current liabilities?

A. Versus current liabilities.

Q. That is an impairment of working capital?

A. Yes.

Q. And what is the situation today?

A. Their current assets exceed their liabilities by one million five hundred thousand dollars.

Q. Did King Features or anybody representing King Features assure you of any business whatsoever at or prior to 1957 to the time of your purchase of the Wilkes-Barre business, International Color Printing?

A. No.

Q. How long have you known various of the personnel at King Features, particularly Mr. Nicht, whose name has been mentioned here?

A. I think I met Mr. Nicht for the first time in the late thirties, and saw him from time to time through the forties and fifties, and not too often.

Q. Now, of course, King Features, as the name implies, owned various features and licensed them to newspapers for publication, right?

A. Right, that is right.

Q. Sometimes referred to as syndicating the features?

A. That is the name.

Q. In addition to comic features, did King Features also license or syndicate the work of columnists and others?

A. Yes.

Q. In other words, the term "features" was not limited as far as King was concerned, to comics alone?

A. No, editorial features, columns.

Q. Did King Features license sometimes, as a package, the editorials and columns along with the comic features?

A. Yes.

Q. As a package?

1958 A. As a package.

Q. And, of course, you owned no features and licensed no features?

A. No.

Q. You did printing alone?

A. Alone, just printing.

Q. Did there come a time when you became aware of the fact that King Features was tying in the licensing of features with its sale of printing?

A. Well, we had been aware of it since we started in the business of printing color comics.

Q. Were there times when your customers were told that the price of the features would be increased if they gave you the printing instead of King Features?

A. Yes.

Q. And is that one of the pressures you have to contend with over the years?

A. That is right.

Q. When I say "contend with," when you were competing with King Features for the sale of your printing it was always at the hazard that the newspapers who wanted you to print might have either the features taken away or be charged more for them by King?

A. That was always the hazard.

Q. Was that threat oft repeated?

1959 A. Yes.

Q. By whom?

A. By Mr. Nicht.

Q. To you personally?

A. To me.

Q. What did he say on that subject from time to time?

A. Well, when we would take a job away from King Features, Nicht would tell me, "Those guys are going to pay whatever money we were making on the printing—they are going to pay for it through the features."

Q. Did there come a time—let's approach this openly or frankly—when Nicht began to talk to you about printing exclusively for him or for King Features, of course, or their becoming a sales agent for you?

A. Well, when we bought International Color Printing Company, right at that time Joe Gorman was negotiating a contract, talking to Nicht about a contract for the printing.

Q. Did there come a time when Nicht talked to you on the subject of permitting them to be a sales agent for you?

A. Yes.

Q. By "you" I mean Greater Buffalo Press?

A. Oh, yes. Yes.

1960 Q. It is not a story that I want to develop now.
 A. I see.

Q. Will you just do it in your own way?
 A. Well, he wanted to be the sales agent. He told us what big things he could do, get this and that and the other paper. As a matter of fact, one of the promises, one of the big promises he held out is that he could get all the printing of the Heart newspapers or thought he could, and that is the thing he offered to—the advantage that he offered to become exclusive sales agent.

Q. What conditions did he want to impose? Did he ask you to print for him and for him alone?

A. Yes.
 Q. And not to print for anybody else?
 A. That is what he asked, yes.
 Q. I'm putting it in modern language, did you have a flirtation with him on that subject?

A. Well, we sort of went along with his thoughts for a while. Q. Along in conversation or in action?
 A. Well, he outlined what he wanted to do, what we were supposed to do, and I put it in a letter, and these are the things we talked about.

Q. Did he talk to you about each one respecting the other's customers, not soliciting the other's customers?

1961 A. No, I don't think he talked about it in that way at all.

Q. What, in substance, did he state that he wanted?
 A. He wanted to become our sales agent. He wanted any new business that continued to exist, he wanted the opportunity to sell it and have it as a King Features contract, to make the money on it that was to be made of the sale.

Q. Did he discuss the matter of eliminating competition? Did he or did he not use those words?

A. No, I don't think so. I don't recall.

Q. You had an exchange of correspondence with Nicht about the possibility of a contract, right?

A. Yes.

Q. And some of those letters are in evidence or at least have been offered, where you say this could be put in a contract or that could be put into a contract. Was that contract ever finalized and entered into?

A. No.

Q. And over a period of time commencing somewhere—well, in what year, 1954 or 1955?

A. 1954, I think.

Q. And continuing for—

A. 1955.

Q. And continuing for two or three years, were you 1952 discussing the possibility of such a contract?

A. Yes, several years. We told him no once, he would not accept that, he wanted to go on talking about it.

Q. Did you consider such a contract or arrangement to be in your best business interests?

A. No, it was contrary to our interests.

Q. Did you discuss with counsel the question of whether such a contract would be valid?

A. Discussed it with you, Mr. Raichle.

Q. What were you told?

A. Told that in your opinion there could be questions brought up about it.

Q. Grave questions as to whether or not it might not violate the Anti-Trust Laws, is that it, in substance?

A. Yes.

Q. Was that communicated to Mr. Nicht's counsel?

A. Yes, it was.

Q. And I show you a letter dated October 7, 1958, from Mr. Nicht to you, which I will offer in evidence. There is no objection.

The COURT: Received.

(Thereupon letter referred to was marked Defendant's Exhibit D-4 and received in evidence.)

1963 By Mr. RAICHLE:

Q. Is this a letter you received from Mr. Nicht shortly after October 7, 1958?

A. Yes.

Mr. RAICHLE: May I read it to your Honor, please?

The COURT: Yes.

Mr. RAICHLE: October 7, 1958, it is on the letterhead of King Features: "Dear Mr. Koessler: I regret to tell you that the agreement which we sent to you under date of July 31 has been disapproved by Mr. Berlin. In view of this fact I am sure that our board will not approve or ratify it. Therefore I must ask you to consider it to be no agreement. Yours truly, Frank J. Nicht."

By Mr. RAICHLE:

Q. I show you another letter, dated October 13, 1958, pertaining to be an answer to that letter from you to Mr. Nicht.

A. Yes.

Mr. RAICHLE: I offer that in evidence.

1964 (Thereupon letter referred to was marked Defendant's Exhibit D-5 and received in evidence.)

By Mr. RAICHLE:

Q. Is this a copy of a letter that you wrote to Mr. Nicht acknowledging receipt of his letter?

A. Yes.

Mr. RAICHLE: May I read this to your Honor?

The COURT: Yes.

Mr. RAICHLE: It is on the letterhead of Greater Buffalo Press: "F. J. Nicht, King Features. Dear Frank: I have received your letter of October 1, 1958, in reference to the agreement that you sent me July 31, 1958, and have noted its contents. I have had no opportunity to present this agreement to our Board of Directors for their approval. Upon receipt of your letter, I presented it to an informal meeting of our Directors and they disapproved. Since the agreement has not been approved and cannot be approved by either corporation, 1965 it must be considered void and no agreement. J. Walter Koessler, President."

By Mr. RAICHLE:

Q. That terminated, did it, the business or the talk about King being a sales agent for Greater Buffalo Press?

A. Right.

Q. Now, Greater Buffalo Press at all times has printed for every customer it could get, right?

A. That is right.

Q. Printed for King, printed for NEA, printed for the other newspapers and the other people we have talked about, right?

A. Other syndicates, too.

Q. Other syndicates too. While we are on the subject, what are some of the other syndicates?

A. Chicago Tribune Syndicate, United Features Syndicate. That covers it.

Q. These last two that you have mentioned are similar to King Features and NEA?

A. Yes.

Q. Down through the years you have printed for all of them?

A. All of them.

Q. At all these plants of yours?

1966 A. That is right.

Q. And you never became King's exclusive printer?

A. No.

Q. Then King never became your sales agent?

A. No.

Q. You have competed with King down through the years to the utmost of your ability, have you?

A. Yes.

Q. Even against this tie-in practice of his, and the pressure and harrassment of your customers by threats of increased prices for features—

A. That is right.

Q. —if you did the printing?

A. Right.

Q. Or got the business?

A. Yes.

Mr. RAICHLE: I now offer it in evidence, the answer of the defendant Hearst to interrogatories dated April 28, 1964, served on it by the Plaintiff.

Mr. BERNSTEIN: No objection.

The COURT: Received.

Mr. RAICHLE: Mark the interrogatories D-6A and the answer D-6B.

1967 (Thereupon documents referred to were marked defendant's Exhibits D-6A and D-6B and received in evidence.)

Mr. RAICHLE: It is Interrogatory Number 1 that we are particularly concerned with at the moment. The Interrogatory asks there be set forth the names of such newspapers which had color comic supplements furnished them pursuant to written contracts entered into with King Syndicate, and which contracts in the period of 1954 to the present—that is April 28, 1964—were cancelled, terminated or otherwise not renewed by reason of such newspapers entering into contracts with Greater Buffalo Press, Incorporated, or any of its subsidiaries, affiliates, and the dates thereof. In other words, a list of those we took away from Nicht, and the Answer furnishes that information.

By Mr. RAICHLE:

Q. During the time of these negotiations, or whatever 1968 you want to call them, when Nicht was pressuring you to

permit him to become the—his organization to become the sales agent and for you to print exclusively for him or for them, were you taking customers away from him as best you could?

A. Yes.

Q. And I notice this Interrogatory-Answer, Exhibit B, it says here that on the 25th of December 1955 you took eight or nine customers away from him?

A. Yes. That wasn't a very good Christmas present, was it?

Q. At any rate, in 1958 you took some, in 1957 you took some, in 1956 you took some?

Mr. BERNSTEIN: Excuse me, your Honor, but I am having difficulty following this. Which Interrogatory and which Answer are you referring to?

Mr. RAICHLE: Number one.

By Mr. RAICHLE:

Q. This shows the result, in part, of your competition with him—

A. Yes.

Q. —which continued during the period of the flirtation or negotiations, right?

1969 A. Yes.

Q. During this period of negotiations something comes up about the Gannett Papers, Utica and Binghamton—

Mr. BERNSTEIN: Before we go any further, your Honor, I move the last answer be stricken on the grounds that Interrogatory Number One, the Answer, shows the dates of '59, '58, '57 and '56. The witness' testimony was that the discussion or the flirtation, as Mr. Raichle described it, terminated with the date of the letter exchanged between the parties, and the Answer to the Interrogatories show newspaper contracts cancelled in 1963 and 1964. So Mr. Raichle's question included periods beyond the flirtation period and the answer, by saying yes, adopted that. I move it be stricken.

The COURT: That was some formal agreement presented between them, that was terminated. I don't think there is anything said here that there might not have been some passes made thereafter. Overruled.

1970 By Mr. RAICHLE:

Q. What is this about Utica and Binghamton? Do you want me to ask the questions or do you want to tell it? Let me put it this way, did there come a time when the Gannett

Papers decided not to print their Sunday comics, at least in Utica and Binghamton?

A. Yes.

Q. Were you in communication with the Gannett people about the business?

A. Yes, the Gannett Papers communicated with us about it.

Q. What was the name of the man that communicated with you?

A. Bitner.

Q. All right.

A. He was the general manager.

Q. What took place?

A. He called me down to Rochester and told me that the Gannett Papers were going to discontinue printing their own comic sections for Utica and Binghamton. At the present time we were printing the Gannett Papers, the Rochester Democrat and Chronicle. He wanted me to put in a price on it. I did put in a price on it, both of them, the Utica and the Binghamton papers. Mr. Bitner was a customer of ours and I felt obliged

at that time to point out to him that while our printing 1971 price would be low, we hoped it was, that Binghamton was 45 miles away from Wilkes-Barre and that Binghamton had a very difficult receiving arrangement, we had talked about it before, there was an old plant backed up in an alley and you could not deliver these comic sections to them in an over-the-road carrier, they had to be brought to Binghamton, transferred to another smaller truck and bring them in. As a result, there was a very, very expensive transportation cost involved, and King Features—or International, rather, were close by and I knew that their transportation cost would be much lower than ours. So I told Bitner about it, he was going to find out anyway, I might as well give him the facts.

Q. You thought it was good business to please your customer?

A. Good business to tell him the truth and all the facts connected with it.

Q. Did you get the Utica business?

A. We got the Utica business, yes. At that time he told me to prepare to print the Utica section.

Q. And Binghamton is about how far from Wilkes-Barre?

A. About 45 miles.

Q. And did International get the business in 1972 Binghamton?

A. Yes.

Q. This was before you bought International?

A. Right. King Features got the business.

Q. King Features, but International did the printing, right?

A. Yes.

Q. There is another spook they dredge up here called Waterloo, Iowa. What in the world is that?

A. That is a little paper in Waterloo, Iowa.

Q. How big is its circulation?

A. About 50,000. It was new, they were starting a new Sunday paper.

Q. What is the story there?

A. Well, we found out about it—I don't know—anyway, we were the first to know about it. I talked to the editor of the Waterloo paper, a fellow by the name of McCoy and he told me that they were having a great amount of difficulty in getting features for this comic section, the whole state of Iowa was tied up in one paper, the good features of the whole state of Iowa were tied in by the Des Moines Register Tribune.

Q. Tied up from whom?

A. Tied up by the newspaper, by Des Moines, from the syndicates, the syndicates agreed to sell Des Moines.

Q. Including King Features had agreed?

1937 A. Including King Features. Including rights for the whole state of Iowa, the whole state. He could not get any features. He could not get the good features. He said his greatest problem was getting features. I suggested to him—what he had in mind was an eight-page section—first of all, to cut the section to six pages and he wouldn't need so many features.

Q. He wouldn't need so many pages if he could not get the features?

A. That is right. Also, we were better set up to set six pages than was International Color Printing Company, or any other printer, for that matter, we would have a better competitive position on printing six pages, and he accepted the idea for a six-page section. In the meantime, I wrote a letter to all the syndicates telling them that this man out in Iowa was going to print a Sunday paper—he asked me to do it, as a matter of fact,

to tell them he was looking for features and to communicate with him.

Q. Did he get the features?

A. He never got the ones he was supposed to get. He got some additional ones.

Q. Then how is this \$50 business? Does this involve the \$50 business?

A. Yes.

1974 Q. How does that come about?

A. Well, I wanted Nicht—I asked Nicht to give this guy some features. He said they are pretty well tied up with Des Moines. He said, "To give him any features, first of all, I have to take them away from Des Moines, I lose the revenue there, and I want to get some money if we are going to do it."

Q. He shook you down for \$50?

Mr. BERNSTEIN: I object. Can we have the witness testify? He is doing very well.

Mr. RAICHLE: I'll say he is.

By Mr. RAICHLE:

Q. Go ahead.

A. He shook me down for \$50.

Q. That is what my friend likes to call a kick-back. That is Waterloo. Now, let's see what else we got. Did you ever have any business with Eastern Color of any kind or character?

A. No.

Q. They are named as a co-conspirator in this litigation. Did you ever buy anything from them or sell anything to them?

1975 A. No. We took the Boston Globe Newspapers—they are closer to it than we are—we got it.

Q. You competed with them and got the business?

A. Yes.

Q. Did you ever conspire or agree, combine with them on any subject?

A. Never talked to them.

Q. Did you ever write to them?

A. No.

Q. Then you never conspired, you never agreed with them on anything?

A. Never discussed anything like that with them.

Q. When did this Hornaday outfit go into business?

A. Oh, they were in business right after the war, I think '48, '49, they started in.

- Q. What is their name?
 A. Southern Color Print.
 Q. They are still competing with you?
 A. Yes.
 Q. Is Acme still competing?
 A. Yes.
 Q. Eastern is still competing?
 A. Yes. World Color is still competing.
 Q. All right. Now—

The COURT: Excuse me. Where does Southern Color Print get its paper from?

- The WITNESS: They buy it from Canada.
 1976 They don't have this Coosa River source?
 The WITNESS: No.

By Mr. RAICHLE:

Q. While we are on the Coosa River source, I think I confused you about one thing, would you tell us briefly, you had a proposal at one time from this fellow Watt?

- A. Right.
 Q. And was it abandoned and later revived, or what happened to that?
 A. Watt withdrew it. He made it and withdrew it.
 Q. This was when?
 A. This was in 1954 or 1955. 1955, I think.
 Q. What was the proposal that he withdrew?
 A. The offer he originally made to us, he withdrew it and gave it to King Features, made it to King Features.
 Q. First he made it to you and then King?

A. Right.

Mr. BERNSTEIN: What offer?

By Mr. RAICHLE:

- Q. The one to build the plant?
 A. Yes.
 1977 Q. All right. After some intervals of—how long?
 A. Oh, months. He made the offer to me, I think, some time in the spring, early spring, early summer, and he withdrew it in the fall, as I recall it, a few months later.
 Q. Did he come forward with another proposal?
 A. Watt?
 Q. Yes.
 A. To us?

Q. Yes.

A. No, not until after we—Watt was never in the picture after that.

Q. Did somebody else in Coosa come to you?

A. No, nobody from Coosa, but we started off on our own. We went down to the Beauwater Paper Company, which was up in Tennessee outside of Chattanooga, and they had started in the paper business and—

Q. Then you went back somehow and you made a deal with Coosa?

A. The paper company, yes, after we got the plant in Sylacauga built and ready to run.

Q. You made a deal with Coosa?

A. Yes.

Q. But you built the plant yourself?

A. Right.

1978 **Q. All right. Well, now, let's talk about NEA. You have had business relations with NEA over what period of time?**

A. Oh, through the '30's, the late '30's, the '40's, the '50's.

Q. And in those years did you print for NEA?

A. Printed some things for NEA, yes.

Q. Did you also compete with NEA?

A. Yes.

Q. And did there come a time when you made an acquisition of something called Buffalo Color Press?

A. Yes.

Q. What was that?

A. That was a color operation that—

Q. Here in Buffalo?

A. Here in Buffalo.

Q. Was it a small operation?

A. Yes, an old, dilapidated organization.

Q. Did you buy that from NEA?

A. Yes.

Q. For how much?

A. \$25,000.

Q. And how did that come about?

A. Well, it got in such bad shape they couldn't run it any more, they wanted to get rid of it, and we were doing

1979 some printing for NEA—NEA controlled the printing of the Scripps-Howard newspapers, for one thing—and we were doing the printing for them, and they also did a small

amount of printing in this Buffalo Color Press, and we agreed to buy the Buffalo Color Press and print for NEA what they were presently printing or printing at that time at Buffalo Color Press.

Q. What year was this?

A. 1955.

Q. All right. Of course, you were in touch with NEA in the conduct of your business and you were in touch with King Features, right?

A. Yes, sure.

Q. You knew the personnel of both outfits?

A. Sure.

Q. And did you hear complaints of one against the other, and so forth?

A. Yes.

Q. You were competing with both of them?

A. Right.

Q. And much has been made of some so-called Beverly Hotel meeting in New York where you introduced King to somebody in NEA. What was there to that?

A. Mr. Walker, who is the General Manager of NEA 1980 and, I think, the President, used to complain to me about King Features replacing them as printers, replacing them as printers by introducing the King Features into the newspapers. When he would sell the features the newspapers would lessen the cost of printing the sections because part of the make-ready then King would have, and he was taking business away from NEA that way, and Walker was complaining about it, and I told him, "Why don't you go down and see Nicht?" He never met Nicht. He said, "Will you introduce me?" I said, "Yes, I will."

Q. Did you introduce the two of them?

A. Yes.

Q. Did you ever enter any conspiracy, combination—

Mr. BERNSTEIN: I object, your Honor.

Mr. RAICHLE: To what?

Mr. BERNSTEIN: To the form of the question.

Mr. RAICHLE: You haven't heard it.

Mr. BERNSTEIN: We are talking about conversations with people. I think this is a sensitive part of the case. I think the people should be identified, the place identified, and leading

1981 questions from counsel to this witness should not be permitted.

The COURT: Have him testify as to what happened, who was there.

Mr. RAICHLE: Exactly what I was going to do, Your Honor.

The COURT: I understand.

Mr. RAICHLE: I was going to have him deny the charge of conspiracy. Under the rule of the cases we are required to do that.

The COURT: Let's have the conversation first, culminated with the statement as to the conspiracy or lack thereof.

By Mr. RAICHLE:

Q. Was there any more to the conversation with which you had to do?

A. Nothing more than that I would introduce—

Q. Did you introduce him?

A. Yes.

Q. When and where?

A. In New York. I don't remember the date but Walker came down. It was in Walker's room in the Beverly Hotel. I called Nicht up and said Walker was in such and such a place, "He would like to meet you, will you go to see him?" He said yes, he came to see him.

Q. You introduced the two?

1982 A. Yes.

Q. Did you stay throughout the meeting?

A. No. As I recall it, there was a man in there talking to Walker at the time from the Cleveland Plain Dealer and I walked out when he did.

Q. Have you told us all that you remember that took place?

A. Yes.

Q. Did you enter into any conspiracy, combination, or agreement with Nicht or with Mr. Walker or with King Features or NEA to allocate customers, refrain from soliciting customers of either, or anything of that character?

A. No.

Mr. RAICHLE: I am trying to comply with the rules of the Interstate Case.

The COURT: I understand that.

By Mr. RAICHLE:

Q. Did you ever enter into a contract, combination or conspiracy, or any agreement with King Features, with NEA, or

with anybody else, to refrain from soliciting color comic supplement printing business from the customers of any such persons?

A. No.

Q. You have in mind that you were negotiating a contract that came near doing some of those things but that the negotiations were terminated?

A. Right.

Q. Did you ever enter into any combination, conspiracy, agreement or understanding to maintain and stabilize the price of color comic supplemental printing in the United States or anywhere else?

A. No.

Q. Did you ever conspire with those I have named, or with anybody else, to monopolize trade and commerce in color comic supplements?

A. No.

Q. Has the acquisition of the stock of International Color Printing by Greater Buffalo Press resulted in or, in your opinion, will it result in a lessening of competition, or have a tendency to create a monopoly with respect to color comic supplemental printing?

A. No.

Q. Are you in active competition today with those we have mentioned?

A. Yes.

Q. King Features and NEA?

A. Yes.

Q. Eastern Color?

1984 A. Yes.

Q. And the many others you have mentioned, Southern Color?

A. Yes.

Q. Acme?

A. Yes.

Q. World?

A. Yes.

Mr. RAICHLE: You may ask.

The COURT: Well, now, I think we will recess. I would like to start at a quarter to two, that will give us a good hour for lunch, and then you may resume your cross examination.

(Thereupon the court was in recess at 12:40 p.m.)

1985 (Proceedings resumed, pursuant to recess, commencing at 1:45 p.m.)

JOHN WALTER KOESSLER, having been previously duly sworn, resumed and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Koessler, in your testimony this morning you referred to a conversation with Mr. Bitner of the Gannett Papers?

A. Yes.

Q. And I believe that you said that he phoned you to advise you—what did you say again, what did you tell us about Mr. Bitner's conversation?

A. My recollection is that he called Buffalo and asked me to come to Rochester to discuss this printing.

Q. Did you go?

A. Yes.

Q. And did you—when was this approximately?

A. Approximately at the end of 1953, the first part of 1954. Wait a minute—the latter part of 1954—1953 or 1954.

Q. Do you recall discussing this at all with Mr. Nicht?

A. What?

1986 Q. Do you recall discussing your conversation with Mr. Bitner with Mr. Nicht?

A. After I seen Bitner?

Q. Yes.

A. Yes.

Q. I show you Exhibit P-10, which purports to be a memorandum from Mr. Nicht of a telephone conversation with you. I ask you to please read that and state whether or not that reports your conversation with him?

Mr. RAICHLE: It doesn't purport to be a transcript of a telephone call, it is something he dictated afterwards.

The COURT: He asked him a question; does it purport to be an accurate memorandum of the call. You do the best you can, Mr. Koessler, to recall what was said.

The WITNESS: I remember this. Wait until I read the second paragraph. The first paragraph is all right. The second is not correct.

By Mr. BERNSTEIN:

Q. The first paragraph says: "Walter Koessler phoned me early this morning from Buffalo. He told me he had seen Mr. Bitner regarding the Utica and Binghamton printing. He put in his price for Utica."

A. Right.

Q. "At the same time he told me that he discouraged Bitner from having Greater Buffalo print the Binghamton Press run, saying King Features could handle that better than he could."

A. Right.

Q. "Koessler told me that Bitner replied, 'That's the way I would like it.'"

A. That is right, except it isn't complete.

Q. What will complete it?

A. We put in a price both on Utica and Binghamton.

Q. Did you tell Mr. Nicht that?

A. What?

Q. Did you tell that to Mr. Nicht?

A. I think I did, yes.

Q. And now Mr. Nicht says: "Koessler also told me that the Gannett people would probably try to dispose of their Rochester color presses but he didn't think they were worth much." Do you recall that?

A. I don't recall that, but I do remember we bought the presses, so that this is wrong.

Q. You don't recall saying this to Mr. Nicht?

1988 A. I may have said that, yes, they were not worth much, yes. I didn't convey the idea we were not going to buy them, we did buy them.

Q. This sentence says: "Koessler also told me that the Gannett people would probably try to dispose of their Rochester color presses—", that part of the sentence is true, is that correct?

A. Yes.

Q. Then he said: "—but he"—referring to you—"didn't think they were worth much." Is that wrong?

A. That could have been so.

Q. You might have said that to Mr. Nicht—

A. Yes.

Q. Regardless of what the fact was?

A. Right.

Q. Then the next sentence he said: "At least, he couldn't use any of them;" you don't—

A. I didn't tell him that. I may have told them they were not worth much, they weren't.

Q. "Later I told Mr. Gorman about this and he was not interested in the presses."

A. I don't know what he told Gorman.

Q. No, do you know whether you told that to—I see, excuse me, I beg your pardon. I withdraw the question. You have no knowledge of what Mr. Nicht might have told Mr. Gorman?

A. No, and didn't then.

1989 Q. At that time had you met Mr. Gorman?

A. Yes.

Q. In January of '54?

A. No, I'm sorry, I don't think I had met him at that time. It was some time after that.

Q. How did you meet Mr. Gorman?

A. How did I meet Mr. Gorman? Mr. Nicht introduced me to him.

Q. And where was this?

A. I think it was in New York.

Q. At a hotel in New York?

A. He sent me to a hotel.

Q. He meaning whom?

A. Nicht told me Gorman was over at the Biltmore Hotel.

Q. Do you recall having lunch with Mr. Nicht and Mr. Gorman in New York?

A. At some time.

Q. I mean at the first meeting?

A. No, I don't recall that.

Q. You don't recall that?

A. No.

Q. Do you recall after lunch leaving and going to a hotel with Mr. Gorman?

1990 A. I recall meeting with Mr. Gorman in the Biltmore Hotel in New York City, but subsequently—not having lunch with him, meeting him at the hotel, and it was my first time personally meeting Mr. Gorman. It wasn't at lunch, I hadn't met him at lunch.

Q. Now, Mr. Koessler, referring back to P-10 that you have in your hand, Mr. Nicht reports: "Koessler also told me, unless I am mistaken, that Bitner indicated interest in comic pages

at Utica and this is something we may be able to use to advantage." Do you recall that?

A. Yes.

Q. Then, do you know anything about the last sentence, "Mr. Hagan, I believe, has an appointment here in New York—"

A. No.

Q. You know nothing about it?

A. No.

Mr. BERNSTEIN: I offer P-10 in evidence, your Honor. I might add, your Honor, this is one of the documents that the Court has taken under advisement.

The COURT: I remember that.

Mr. BERNSTEIN: I reoffer it now.

The COURT: Same ruling, I will consider it further.

1991 Mr. RAICHLE: Subject to the same objection.

Mr. BERNSTEIN: May I say, in order to save time, the Plaintiff offers or will offer other documents like this, but in order to save time and save the offer, the Plaintiff will make the offer at the completion of all of the cross examination of all of the witnesses so that we can discuss it, rather than do it on an individual basis, unless your Honor would prefer to have it on an individual basis.

The COURT: You better specifically take it up from time to time, as you have just done, and I will dispose of that in due course. It may be that you will wish further argument on it. All right.

By Mr. BERNSTEIN:

Q. Now, do you recall having a conversation with Mr. Nicht about the Waterloo, Iowa situation in and around January 14, 1954, and I show you Document No. 258, which hasn't as yet been offered as an exhibit—strike it out. I ask the Clerk 1992 to mark for identification P-70.

(Thereupon document referred to was marked Plaintiff's Exhibit P-70 for identification.)

The COURT: If I remember, the serious side of the argument against that, that series of letters, such as P-10, was that I think Mr. Raichle contends that they did not constitute any book entries or business records of the corporation, but were some type of private memo of Nicht's. I don't want to get into that now but it is something I will take up again and thresh out with you.

Mr. BERNSTEIN: I understand.

The COURT: All right.

Mr. STEVENS: May I see that?

By Mr. BERNSTEIN:

Q. I show you P-70 for identification. This purports to be a transcript of three phone conversations between Mr. Nicht and yourself. I would ask you to please read just—

1993 Mr. RAICHLE: I don't like to interrupt, but it isn't any such thing.

Mr. BERNSTEIN: Excuse me. I offer in evidence—

Mr. RAICHLE: Just a minute, will you please? You said it was a transcript or purports to be a transcript of a telephone conversation. It is no such thing, it is a purported partial transcript of one side of a telephone conversation.

Mr. MOORE: As testified to by the witness.

Mr. RAICHLE: That is what the witness testified to who identified it. Am I not right?

Mr. BERNSTEIN: I offer in evidence—

Mr. RAICHLE: Am I not right?

Mr. BERNSTEIN: I will clarify that.

Mr. RAICHLE: Won't you admit that I am right?

The COURT: Look, are you going to strike the question as far as you have gone? You withdraw that?

Mr. BERNSTEIN: I withdraw the question. I offer in evidence pages 55 through 58 of Mr. Nicht's deposition, and I represent to the Court that in those pages Mr. Nicht identifies the memorandum and he says—question on page 56:

"Q. Would you please tell us how this transcript was made, that is, if you know?"

"A. I don't recall that."

"Q. Did you—"

"A. Probably my secretary."

"Q. When you say your secretary, did you commit this to writing here or did you direct it to be committed to writing, the writing which appears on these two pages?"

"A. I think so."

Then he states this is the result of the initials of M.L. on it, that stands for his secretary, and he is asked:

"Q. When you say your secretary committed it to writing do you recall now whether someone was listening in or whether some type of device was attached to the phone to record the pur-

ported three conversations between you and Walter Koessler, do you recall what happened?

"A. No.

"Q. Did you use a Dictaphone and record the words 1995 you spoke and the words Mr. Koessler purportedly spoke?

"A. I don't know just how that was.

"Q. Going back to 1954, what was your practice then, did you just record what you were saying on the phone, or was there a Dictaphone recording the other conversation also?

"A. We had no Dictaphone recording.

"Q. Referring now to Plaintiff's Exhibit 3"—which is now P-70—"what does that represent, I would like to know the mechanics?

"A. I would say notes on the conversation between Mr. Koessler and myself.

"Q. Would these be notes that you took or notes that your secretary took?

"A. They would be both. They might be notes I take or she might have taken.

"Q. Does it indicate to you that if the secretary took the notes she was listening in on the phone conversation?

"A. Yes."

By Mr. BERNSTEIN:

Q. Now, Mr. Koessler, would you please read the first 1996 paragraph to yourself?

Mr. MOORE: Wait a minute. You have offered in evidence this part of Nicht's deposition. I take it you offer this as substantive proof in this case?

Mr. BERNSTEIN: That is correct.

Mr. MOORE: May we read the pertinent parts?

The COURT: There is no question, I am going to allow a full disclosure. If there is something more—

Mr. BERNSTEIN: The Plaintiff has no objection to putting the entire deposition in.

Mr. MOORE: We do.

The COURT: I don't want to read the whole thing, except as it pertains to this. You can screen it out, that is what I would like.

Mr. MOORE: I have one line I want to read. Referring to page 59, line 20, which you left out: "Referring to Plaintiff's Exhibit 3"—which is the document you have marked for identi-

fication—"what does this document represent?" "A memo of
the conversation or conversations I had with Mr.
1997 Koeessler."

Mr. BERNSTEIN: And I read the next line:

"Q. When you say memo, is that summarizing it, or are these
the exact words that would have been uttered in that
conversation?

"A. I would say it is a summarization or condensation.

"Q. Were these summaries or words committed here taken
during the conversation?

"A. I think so."

Mr. MOORE: Read on.

Mr. BERNSTEIN: All right.

"Q. Or did someone, to your knowledge, rely upon their
memory after the conversation and commit it to paper?

"A. It could be both.

"Q. Going back to the period around this time, namely 1954,
what was your policy in regard to telephone conversations and
reporting them, did you write memoranda after telephone con-
versations at that time?

"A. A good many of them, not all of them.

"Q. Did you invite other people to listen to such conversa-
tions?

"A. Once in a while my secretary.

"Q. Referring to these three telephone conversations pur-
portedly made between you and Walter Koessler; what
1998 does this paper, which you say you had committed or
had typewritten at your direction, what exactly does this
represent? Does this represent your writings after a telephone
conversation or does it represent the writings of someone who
listened in during the telephone conversation?

"A. It could be both, but principally somebody else.

"Q. When you say someone else, based upon your present
recollection of what took place around 1954, what was it, yours
or someone else's?

"A. Someone else's.

"Q. When you say someone else, what did you say that indicated
to you that someone else listened in on the telephone
conversation or that you told the person"—

Then there is an objection and then the question—

"Q. You say, Mr. Nicht, that Plaintiff's Exhibit 3"—which
is now P-70—"would be your version or summary of a tele-

phone conversation after it took place or it would be someone else's version, is that correct, or summary committed to paper?

"A. Yes.

1999 "Q. What is it, is it yours? Can you tell us no whether it is yours or whether it was someone else's, both, based upon the initials M.L. appearing at the end here?"

"A. Someone else's.

"Q. You say it was someone else's and not yours, is that correct?"

"A. Yes.

"Q. Do you know how that person received the information or received information relating to the substance of the conversation, of the purported conversation, committed to paper on Plaintiff's Exhibit 3?"

"A. On an extension telephone.

"Q. Do you know whether or not the person so listening used any additional devices merely than listening in?"

"A. I don't know.

"Q. When you refer to an extension telephone, do you refer to a telephone or some device whereby the person can listen in to what you said and what the other person said?"

"A. Both.

"Q. In other words, the person using the extension 2000 telephone would be able to hear both parts of the conversation, is that correct?"

"A. That is correct.

"Q. Do you recall now what took place on or about January 14, 1954, in regard to the telephone conversation reported in Plaintiff's Exhibit 3?"

"A. Do you want me to read that?"

"Q. No, no, I just want to know the device, whether the person using the extension telephone heard both parts of the conversation, that is, what you said and what the other party said?"

"A. It would be possible.

"Q. When you say it would be possible, based upon your experience and also your present recollection, what actually took place?"

"A. What would take place on an extension telephone, suppose they could hear the incoming conversation."

"Q. Referring to Plaintiff's Exhibit 3—"

Mr. RAICHLE: This is the \$64 one, read this one.

Mr. BERNSTEIN:

"Q. Referring to Plaintiff's Exhibit 3"—now P-70"—does this report both sides of the conversation, or does it only report one side of the conversation, or don't you know?"

2001 "A. I'm not sure of it, it looks like one side."

"Q. You say one side; whose side would that be; your side of the conversation or the other party named on top of Plaintiff's Exhibit 3"—now P-70—"namely, Walter Koessler?"

A. It is my side, yes.

Q. In other words, Plaintiff's Exhibit 3"—now P-70—"to your best recollection now represents one side of the conversation, the exhibit purportedly records a conversation between you and Walter Koessler, is that correct?

"A. Yes."

The COURT: Of course, it is what he said.

Mr. BERNSTEIN: That is right.

The COURT: What Nicht said.

Mr. BERNSTEIN: What Nicht said to Mr. Koessler.

By Mr. BERNSTEIN:

Q. I now ask Mr. Koessler to please read that. I ask you this question, have you had the opportunity to read the first paragraph to yourself?

A. Yes.

Q. Now, does this refresh your recollection as to what Mr. Nicht said to you as to that telephone call?

A. I recall a conversation with Mr. Nicht.

2002 Q. Do you recall that he said: "Hello. I will tell you what it is about. Waterloo. Have you heard anything more, and I will tell you everything I know. I got a man out there and we're not working at cross purposes and we're not going to." Do you recall that?

A. He might have said something like that.

Q. "Apparently they have decided on an eight-pager, having discarded the idea of a six-pager." Is that correct?

A. That is what he said, that isn't what the facts were.

Q. The facts were as you testified this morning, that you had persuaded them to use six pages rather than eight because they would get less features?

A. And they did use six pages.

Q. Mr. Nicht did say to you at that time—

A. I don't know, I have some recollection of it, yes. Go ahead. He may have said it.

Q. You have no reason to doubt that he said it?

A. I don't know. He could have or could not have.

Q. "He said: 'Now we haven't put in a bid and we may or may not, but the Barrick people in Kansas City are in this picture through NEA.'"

A. They were a color printer in Kansas City, working with NEA.

2003 Q. They were working with NEA at the time?

A. Not working for NEA, working with NEA.

Q. Do you recall whether Mr. Nicht said to you: "Now we haven't put in a bid and we may or may not, but the Barrick people in Kansas City are in this picture—"?

A. He could have. I didn't believe him.

Q. Do you recall whether he said: "Whether they will bid hell out of it, I don't know, and between us I don't care."?

A. I don't know. What difference does it make?

Q. Then he said: "I want to be guided entirely by what you suggest now. We talked about this in the beginning, so basically our minds meet, but what suggestion have you got to make?" What about that, is that accurate or inaccurate?

A. I don't know. Let me go over this. "What suggestion have you got to make?" We didn't make any.

Q. He said he wants to be guided entirely by what you suggest now?

A. My recollection is we didn't make any suggestion.

Q. Is it your recollection that he asked you that?

A. He could have.

Q. He said he talked to you about this in the beginning. Do you recall now whether you had a conversation with him earlier than this?

2004 A. Yes, we had some conversation about these features that this Iowa paper was trying to get.

Q. So when he said: "Basically our minds meet," did your minds meet on that?

A. No.

Q. They did not?

A. Well, he could not—he didn't or couldn't supply them the features they wanted. It wasn't my mind meeting, it was his mind and Mr. McCoy's mind, of the Waterloo paper, meeting.

Q. In any event, I understand that he shook you down for \$50?

- A. Exactly.
- Q. Is that the only time he ever shook you down?
- A. No.
- Q. Tell us about the others?
- A. I can't tell you, innumerable times. He shook us down on the Harte-Hanks papers, for one.
- Q. Any papers printed down in Lufkin, Texas?
- A. Yes, the Harte-Hank papers.
- Q. Any others?
- A. The Shreveport Times.
- Q. Any others? How about the Buffalo News?
- A. Yes, the Buffalo News.
- Q. And on the Buffalo News how did you make that payment to him?
- A. How?
- Q. Yes.
- A. Every week he sent us a bill for it.
- Q. What did he charge on that bill, what did he say? Did he say that this would be for special mat services?
- A. On the Buffalo News.
- Q. Yes.
- A. No. What are you talking about, Waterloo or the Buffalo News? No, he didn't say that on the Buffalo Evening News.
- Q. Did he say it on any—
- A. He said it on the Waterloo mat.
- Q. What did that mean to you?
- A. What did it mean to me? That we were paying for the features that he was going to release from Des Moines and give to Waterloo.
- Q. And you were going to pay that on an invoice which said what?
- A. Mat services.
- Q. What does that mean in the printing business?
- A. Well, the syndicates supply the printer with mats, and that is part of their service. They shouldn't be charging for it but that is the way he wanted to bill it, that was his idea.
- Q. Let me understand this, Mr. Koessler; let's take a non-shakedown case. When you do printing for a syndicate, is it customary in the business for the syndicate to supply the printer with a mat?
- A. If the printer hasn't already got the mats, yes, it is part of their business, part of the service.

Q. So then if you were to commence printing for a newspaper that had formerly printed its own and then had gotten some new features from a syndicate that it had not printed, Greater Buffalo would expect to get the mats from the syndicate, is that right?

A. If we didn't have it.

Q. Is that free of charge to the printer or does the printer pay for it?

A. The printer doesn't pay for it, the syndicate supplies it to the newspapers, part of the charge to the newspapers.

Q. So when King, on the Waterloo paper, sent you an invoice for mat services, that appeared to be an invoice for providing a mat to you, is that correct?

A. That's what it is supposed to indicate.

Q. Did you go along with that?

A. I knew what it was for.

Q. What was it for?

A. It was for supplying these features they couldn't
2007 get otherwise.

Q. You went along with it to the extent of authorizing the payment by Greater Buffalo?

A. If we didn't Waterloo wouldn't get the features, we wouldn't have the printing job. That contains the idea of the shakedown.

Q. I want to get—I want the record and the Court to find out whether the payment was actually made—

A. Yes.

Q. It was made through Greater Buffalo's books as if it were that Greater Buffalo had received a mat and paid for it, is that correct?

A. We paid it the way they invoiced it.

Q. That was for mat service?

A. That is right.

Q. Now—

A. Are you through with that?

Q. No.

A. Can I ask you some questions?

Q. No, you will have an opportunity, Mr. Koessler—

A. It is still part of this thing—

Q. I will give you an opportunity to give us your best recollection on this. Might I say, Mr. Koessler, when I am through cross examining, Mr. Raichle has the opportunity to

2008 come back and clarify anything. I don't intend to mislead you, I want to get the facts, I want all of the facts. Now, I show you a memorandum—strike that out. Going back to P-70, there is a reference made in the first paragraph to the man that Nicht had calling on the Waterloo, Iowa paper?

A. This here?

Q. Yes.

A. Yes. Go ahead.

Q. Who was that?

A. I don't know, I never heard of the man.

Q. He said: "What do you mean? Our man? His name is Alofsin. He is Al's son." Do you know—

A. I didn't know Al's son.

Q. Do you recall that he told you that in that conversation?

A. He could have, yes. He must have. I asked the question who was—apparently asked the question, "Who is this man?"

I didn't know him.

Q. And when he told you that he is Al's son, what did that mean to you?

A. Al was his father.

Q. Al who?

A. Alofsin.

Q. You knew Al Alofsin?

2009 A. Many years.

Q. You do recall now that Nicht identified Al Alofsin's son as having been the person who was calling on the Waterloo newspaper?

A. Yes.

Q. He told you that in his conversation?

A. I recall after reading that.

Q. You do recall?

A. Yes.

Q. Thank you. Now, the next sentence, he said: "Apparently it's young Bob McCoy, son of the owner or former owner. Is that the guy you are dealing with?" Do you recall whether he asked you that question?

A. He could have.

Q. Then Mr. Nicht says: "He says—" —that is referring to Bob McCoy—"in addition to Greater Buffalo, he has also asked and received a quotation from NEA." Do you recall whether he told you that?

A. That may be so.

Q. Do you recall whether he told you this: "We have told our man to hold his horses until he hears from us further. Now, how are we to coordinate this?", do you recall that?

A. He could have.

Q. Do you recall him saying that?

2010 A. He could have.

Q. He said: "Yes. Well, I think so long as we're working together on this. Or could we do it 'bass-ackwards'—"

A. Where are we at?

Q. Second paragraph.

A. You didn't ask me that.

Q. Excuse me, read that paragraph.

A. Where are we going?

Q. Read the second paragraph, please.

A. Go ahead.

Q. Do you recall whether he said: "Or we could do it 'bass-ackwards' and if it wound up that we could have it, we could reverse the procedure. You see what I mean?"

A. I didn't see what he meant. He may have said that. I didn't know what he meant. What do you think he meant?

Q. I don't know. He said to you: "You will call him, eh? Well you could, but in such a way as to have him realize there is no connection between the two of us. Don't you think so?" Do you recall him asking you that?

A. He may have said that.

Q. Then he said: "Yes, you do it on your own." Then 2011 he asked you this question: "What do you think you would quote on an eight-pager?" He said: "Well, you are going to call him. Okay, I will be here until four thirty. All right, Walter." Do you recall whether he said that?

A. It could be so.

Q. On the next line—will you read the next paragraph, that purports to be another conversation.

A. Let's put it this way, Nicht was talking to me in the first two paragraphs, he asked me to call him back.

Q. What did you say to him?—I will withdraw the question I have just asked you—what did you say to him in response to these questions?

A. I don't remember.

Q. Let's take the second paragraph—

A. I don't know if I said anything. He was a guy that did all the talking, it was hard to give him an answer.

Q. Let's look at the last paragraph on that first page. That is another phone conversation. Please read it to yourself and see if that refreshes your recollection.

A. The last paragraph starting with "hello"?

Q. "Hello", yes. "Well, now wait a minute, you are 2012 talking about an eight-page and this is a six."

A. I was supposed to be talking to him but he is asking the questions.

Q. That is right. He said: "This is a six-page standard. Yes, I know." Had you told him it was a six-page that you were dealing with?

A. No, I don't think I did.

Q. All right. He said: "Fifty, 11.14." Do you recall whether he said that to you?

A. Yes.

Q. What does that mean?

A. That meant the price we were supposed to quote on this. What price were we going to quote Des Moines. He asked me that.

Q. What?

A. I gave him this price.

Q. He asked you what price Greater Buffalo was going to—

A. Exactly right.

Q. —quote to Waterloo?

A. Yes.

Q. You told him the price?

A. I gave him this price.

Q. Fifty, 11.14—

A. That meant the price for fifty thousand was \$11.14

2013 a thousand.

Q. Then he said: "Yes. Well, they do, Walter. I knew that in the beginning when you first told me about this on account of Des Moines controlling ABC or State Rights with any syndicate." Do you recall whether he said that to you?

A. Yes.

Q. What does that mean?

A. It means that I asked him a question, how about those features, how about getting some features, this little paper out in Waterloo can't print a comic section.

Q. What does ABC or State Rights with any syndicate mean?

A. The rights to the whole—you ought to know what it means, you are suing the syndicates for that reason right now.

Q. Mr. Koessler, I hope you will bear with us. I do know what it means.

A. You were suing them then and many years before that time.

Q. I have to ask you these questions so that the record will reflect what these cryptic phrases mean, so that the Court will have—I don't like to stand here and debate this with you.

2014 A. The Court should have an idea of what is going on, all of it.

Q. I want all of the facts, and what I leave out Mr. Raichle will be able to get from you. Now, I want to know about this "controlling ABC or State Rights with any syndicate", what did he say, what did you say to him, and see if you can refresh your recollection based on this one-sided part of the conversation?

A. My recollection is that I told him that if this paper out in Des Moines couldn't get the rights to some of these features they were not going to print a comic section at all, they weren't going to have anything to put in it except some of these so-called dogs that the syndicate can't sell to anybody else.

Q. Now, Mr. Nicht says, next sentence: "That is the only way they buy and we are handicapped. Of course, it is a big account with us but they spread their business and pick the cream of the crop from each one so that this destroys——", do you know what he was referring to?

A. Yes. He was referring to the fact that the Waterloo paper couldn't buy any features or any other paper in the State of Iowa.

Q. He said: "Of course, it is a big account——", did he mean Waterloo?

2015 A. He meant Des Moines.

Q. He said: "So this supplement for Waterloo would have to be a very special one for anyone. You know what I mean."

A. Yes, he meant it would have to have a lot of dogs in it.

Q. He then said: "No, we're out on a half-dozen of our top features and that is true of other syndicates, too, Walter. They won't buy unless they get State Rights on Sunday and ABC Rights on daily. Now NEA may have a lot of pages that are available." Did he tell you that?

A. He could have.

Q. He said: "I don't know, but it's a poor supplement for

them, but it is colored, after all. All right, I got that and that is helpful up to this point. The prices you have given me are delivered prices?" He asked you that question?

A. Yes.

Q. What did you answer to that?

A. Well, do you want all the answers I gave him?

Q. On that question?

A. Well—

Q. Yes, I would like to have everything you recall
2016 about that conversation. You recall this telephone
conversation?

A. Yes.

Q. Tell us what you recall about it?

A. I recall that he asked us the price on this that we were going to put in in Des Moines. I gave him this price of eleven fourteen for fifty thousand, but we didn't put that price in in Waterloo. You know why? Because I didn't trust Mr. Nicht. I thought he was trying to get the price that we would put in and then he was going to put in a lower price for his own and take the business. I gave him this price, I actually sent an invoice for the—wrote a contract for an entirely different price.

Q. Higher or lower?

A. Lower.

Q. And did you—nonetheless, what did you say to him about the \$50?

A. I don't think I said anything to him about \$50 at that time.

Q. When did you say it to him?

A. Some time later.

Q. Tell us about that conversation?

A. Oh, I don't remember too much about it except that he wanted \$50 if he was going to release some of these
2017 features, and we said, "Okay, we'll pay the \$50." We didn't tell him for how long and I hoped not to pay it to him too long.

Q. How long did you continue?

A. Right from the beginning.

Q. Do you still pay him the \$50?

A. Yes.

Q. Today?

A. Today.

Q. You are still the victims of that shakedown?

A. Yes. We are the victims of the Anti-Trust suit, we didn't want to change it in the course of being sued.

Q. You didn't think you were doing anything wrong, is that right?

A. We were standing for a shakedown, if that is wrong.

Q. Aside from that?

A. He was the one that made—requested the bribe, the shakedown, if that's what it is.

Q. The only thing that you did wrong was to go along with it?

A. I don't know if that is wrong.

Mr. RAICHLE: If the Court please, could I refresh counsel's recollection?

Mr. BERNSTEIN: I'll withdraw the question.

Mr. RAICHLE: Well, but have in mind that counsel has in open court characterized Greater Buffalo Press as the 2018 victim and King Features as the culprit, and we had that discussion about this unusual charge of a conspiracy between a victim and a culprit in a case that holds without exception that when a man submits to extortion he has done nothing wrong.

The COURT: All right.

By Mr. BERNSTEIN:

Q. Would you please read the rest of the document to yourself, Mr. Koessler?

A. In other words, you mean there?

Q. Yes.

A. Where do you want me to start?

Q. Page 2.

A. "In other words"?

Q. That is right. Would you please read that, and I am going to ask you this question after you have had the opportunity to read the remainder of the document, would you say that this document, P-70, accurately reflects what Mr. Nicht told you in those conversations? It doesn't give your part of the conversation.

2019 A. I don't know. I didn't take a transcription of this.

I thought I was talking to a man not—to a man on the telephone. What he reported as my conversation, I don't know. I didn't think he would lower himself to do such a thing, but he did.

Mr. BERNSTEIN: I offer P-70 in evidence.

Mr. RAICHLE: Same objection. First he offered it as a transcript—

Mr. BERNSTEIN: P-70 has never been offered before.

Mr. RAICHLE: Just a minute—

The COURT: It is the same class of document, the same ruling.

Mr. STEVENS: Objection for NEA, of course.

The COURT: Yes.

By Mr. BERNSTEIN:

Q. I show you—excuse me—strike it out. In respect to the Utica-Binghamton transaction, you stated that King Features could offer a lower transportation rate with respect to Binghamton, is that correct?

A. Right.

Q. Now, is that because International's color printing plant was located closer to Binghamton?

A. Yes.

Q. And now you own—Greater Buffalo owns the stock of International, is that correct?

A. Yes.

Q. Now, what can you tell us about the strategic location of both International—all of Greater Buffalo's plants owned through its subsidiaries and owned by itself, Greater Buffalo's plant at Wilkes-Barre, through International; Greater Buffalo's plant in Dunkirk, through Greater Buffalo Press; the plant at Sylacauga, at Lufkin; are you strategically located to most all of the newspapers in the United States east of the Rockies, so far as transportation rates are concerned?

A. We are not the most—we are strategically located, not the most strategically located.

Q. Which of your competitors are better located?

A. Well, Southern Color Print is better for certain parts of the south.

Q. Which parts?

A. The parts adjacent to their plant in Newport News. It would be difficult to draw a line where they are better, where they are not.

Q. How far away from Newport News would they have this advantage?

A. I would have to check all the transportation rates to answer that question.

2021 Q. By glancing at this map, Mr. Koessler, could you tell us where you would believe Southern Color would have the advantage over one of your plants?

A. I couldn't tell you that. We would have to check the rates, you would have to name the particular cities and go through a whole list of checking rates. I can't tell you.

Q. How about the Sylacauga plant, would that have an advantage over some of Southern Color's plants?

A. Definitely.

Q. How about Lufkin, would that have the advantage over some of—

A. Exactly.

Q. Which competitor—which competitors would have an advantage over the Sylacauga—the Lufkin plant, and in what areas?

A. What?

Q. Which competitors of the plant at Lufkin would have a transportation advantage over Lufkin east of the Rockies?

A. There is World Color, that would have a transportation advantage in some areas out here in Missouri and Kansas probably, and Arkansas, Nebraska and Iowa, maybe.

Q. How about Eastern, would they have an advantage?

2022 A. Of course they would not, they are down there in New England.

Q. Where would they have an advantage?

A. In New England and Eastern Pennsylvania, certain parts of New York, probably down as far as Maryland and then they run into competition with Southern Color Print.

Q. Can you give us a general idea of where your plant would have an advantage?

A. Well—

Q. Start out with the Wilkes-Barre plant, where would that have an advantage?

A. Well, Wilkes-Barre, the advantage isn't too great except in Pennsylvania and West Virginia, certain parts of Maryland probably, and New Jersey, maybe certain parts of Ohio.

Q. Dunkirk and Buffalo, New York, where do those plants have an advantage?

A. Over who?

Q. Over competitors?

A. Well, we would have advantages in Ohio, Indiana, Illinois; that's about all.

Q. How about Lufkin, where would they have the advantage?

A. They would have advantages in Dallas and New Mexico, Oklahoma; that's about it. There were other advantages
2023 other than the transportation involved in these things.

Q. What others?

A. Being able to print these things cheaper and better than the competitors.

Q. Being able to print things cheaper than your competitors, is that what you said?

A. And better.

Q. Now, the Court asked you a question this morning concerning the ability of Greater Buffalo to get business and offer a cheaper and better job to newspapers that are printing their own. Going to that subject for a moment, Mr. Koessler, were you referring to a newspaper that had color printing facilities in your testimony this morning?

A. Yes, because when we were competing with a newspaper that printed their own comics, they had color facilities right at that moment when we were trying to get their business, certainly.

Q. Have you ever gotten business from newspapers that didn't have color printing facilities and you induced them to print comics?

A. Yes, we took it from competitors, King was one.

Q. Those were papers that didn't have the facilities to print their color comics?

2024 A. At one time they had the facilities to print them, most everybody did.

Q. So the history of this business, this printing color comic supplements for newspapers that didn't print their own, to your knowledge, started about what time?

A. What do you mean?

Q. When did the practice start of newspapers not printing their own color comic supplements and relying on contract printers, such as yourself, to do it?

A. Oh—am I supposed to tell the stories I have heard? I don't know anything about it, of my knowledge.

Q. Let me ask you this question—

A. My own knowledge don't go back that far.

Q. Relying on your own knowledge, Mr. Koessler, at the time you started in business did most of the newspapers print their own color comic supplements or did somebody else?

A. Most of the newspapers for whom we printed color comic supplements printed their own. King Features' business was made up of newspapers that had at one time printed their color comic sections, and they more or less operated in the same way.

Q. When they ceased printing their own color comic sections did they continue to do color printing?

A. Yes.

2025 Q. Could the color printing facilities be adapted to color comic supplements?

A. Yes, today and for many years since.

Q. And does it require any special skill to print color comic supplements?

A. They are printing four colors in the newspapers practically every day, so they got the same crews, the skilled crews, if it is skilled, they could use the same crews to print the comics as they desired.

Q. In your opinion, most of the newspapers in the United States have a sufficient skill to print color comic supplements if they desired?

A. Yes.

Q. But I gather that they are not skillful enough to do as good a job as Greater Buffalo Press?

A. We wouldn't be selling them if they could do it to equal advantage.

Q. One feature is the quality that Greater Buffalo Press has over newspapers, is that correct?

A. That is correct, yes.

Q. How about equipment; does Greater Buffalo have an advantage in having the skill of taking what other people regard as undesirable and unsatisfactory or antiquated equipment and converting that into efficient, effective color printing equipment?

2026 A. We think we do.

Q. So it is by reason of those factors that you are able to make a profit and yet induce newspapers to have you do the printing, rather than do their own?

A. Newspapers save money, it isn't too great, it is something. They save the headaches that go with it too.

Mr. BERNSTEIN: Does your Honor want to keep on going?

The COURT: Yes. I might say that I have a mission tonight, Bishop Sheen is in town to speak, I am going to introduce him. I have to leave at three fifteen to get prepared, go home and square away. I want to do that tonight. I will be glad to begin at nine thirty in the morning to make up for it, if you are contented to begin at that time.

Mr. BERNSTEIN: The reason I ask that question, Mr. Koessler appeared to be getting tired.

The WITNESS: I am fine, don't worry about it.

The COURT: Gentlemen, I know Mr. Koessler has had some physical trouble in the past. He looks hale and hearty now. Let's run until three and that will give me time and give him a rest. Can you start at nine thirty in the morning?

Mr. BERNSTEIN: Yes.

The COURT: Can you gentlemen?

Mr. RAICHLE: Yes.

Mr. STEVENS: Yes.

The COURT: We will start at nine thirty.

By Mr. BERNSTEIN:

Q. Now, going to another topic, I show you P-16 in evidence, a letter that you wrote to Mr. Nicht—

Mr. RAICHLE: What is the date?

Mr. BERNSTEIN: June 13, 1955, it is in evidence.

By Mr. BERNSTEIN:

Q. I invite your attention to the first paragraph. You say to him: "Dear Frank—" before we go into that, might I ask this question, you say, "Dear Frank," were you friendly with him?

A. Sure.

Q. And tell us a little bit about him; was he a meticulous person that kept detailed notes?

A. Sure did.

2028 Q. Well, tell us some of your experiences with that?

A. Well, all I know is what he said. He used to wake up in the middle of the night and write himself a lot of notes and bring them down to the office—

Mr. RAICHLE: You don't know whether he was meticulous.

Mr. BERNSTEIN: I object.

Mr. RAICHLE: Object all you want.

Mr. BERNSTEIN: I will object all I want. I object, Your Honor, there was no basis for interrupting the witness' testimony.

Mr. RAICHLE: Just a minute, Just a minute—

Mr. BERNSTEIN: We are on cross examination and I think that any interruption to indicate any kind of a response to the witness is highly inappropriate.

Mr. RAICHLE: You tried to put the word "meticulous" in his mouth. He is explaining why it wasn't meticulous. He had these nocturnal habits of talking to himself at night. How does he know on those occasions whether he was meticulous or not.

Mr. BERNSTEIN: I object, I object—

The WITNESS: I didn't recognize the word "meticulous".

The COURT: I was going to comment that all I heard Mr. Koessler say was that this man used to wake up nights and dictate notes to himself. I don't know that that word "meticulous", is injected in here. Do you know anything about that?

Mr. BERNSTEIN: I will withdraw the word.

The COURT: Do you know anything about the notes he made?

The WITNESS: No, nothing more than he told me. He could not sleep nights, he would get up and write these notes and go back to bed again.

By Mr. BERNSTEIN:

Q. Right, and did he impress you as being unreliable, eccentric?

Mr. RAICHLE: I object to this, if Your Honor please.

The COURT: I suspect he did; overruled.

Mr. RAICHLE: Then the door is open for me to ask what his impressions were in other respects, whether he was a man of moral—

The COURT: You asked him, in his relationship to him, if he thought he was somewhat unreliable and eccentric.

The WITNESS: No, Nicht had a good mind, he was a very, very difficult person. He always reminded me of a statement Huey Long made at one time, he never took any interest in seeing the other person's side, and Huey Long said, "Holler murder, never give in an inch." That sort of described the character he was.

The COURT: I want to hear that again, what did Huey Long say?

The WITNESS: "Holler murder, never give in an inch." He was a tough fighter, a real tough fighter.

By Mr. BERNSTEIN:

Q. He was a difficult business opponent of yours?

A. Very difficult.

Q. He was a strong competitor of yours?

A. Yes, very strong.

Q. And you did not regard him as being off his rocker
2031 or a mental case or anything like that?

A. Not at all.

Q. Did you have any impression that the notes that he made were musings or something that were unreliable, or when he wrote notes to himself he was reporting his thoughts, reminders—

A. And his wishes.

Q. And his wishes. His side of the matter?

A. His side and things he hoped would come to pass.

Q. Nonetheless, in your opinion they were reflections of the operation of his mind at the moment?

A. What he hoped for, and the way he thought certain things would happen, and in a lot of instances the way he thought they did happen.

Q. Going to P-16, you have it in front of you, you say in the first paragraph: "These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate, and the Greater Buffalo Press, Inc." Did you mean when you told that to Mr. Nicht that you were in agreement with him on these provisions?

A. I meant to put in writing what he told me that I had to put in writing in a letter. These things that are in this letter are all recorded in one of Mr. Nicht's memorandums some 2037 days or weeks before this time. This is what we had to do to get along with Nicht.

Q. You felt at the time you wrote this letter and signed this letter that in order to get along with Nicht you had to record that you were in agreement with this, it would be put into a formal contract?

A. I had to say that in a letter.

Q. All right. Now—

A. I didn't have to say it but I did say it.

Q. You felt it was good business to say it?

A. It was good business not to get on the wrong side of Nicht.

Q. Why was that?

A. He was a difficult guy and he could do a lot of harm to you.

Q. Note the date on that letter, that is June 13, 1955?

A. Right.

Q. Had you purchased International yet? Note the first paragraph there—note the next paragraph. The next paragraph says: "The Greater Buffalo Press, Inc., will purchase International Color Printing Company, and assume a printing contract which is presently being negotiated between King Features Syndicate, and International Color Printing Com-

pany." What is your recollection now? Was this before 2033 you actually bought International?

A. I think it was.

Q. Was this—were you having—

A. It was before we actually signed the papers.

Q. That is correct, that is what I meant. You had—well, let me ask you the question, had you concluded the deal even though the papers weren't signed yet?

A. With International?

Q. Yes.

A. At this time?

Q. Yes.

A. I don't think so.

Q. And what could Nicht have done to you? You say you were afraid of Nicht, it was a good business to put it in a letter. What could he have done?

A. He could have done a lot of things; annoyed our customers by raising the price of the features, he could have made International Color Printing Company wait for their money if and when we bought the thing, he could have held up their bills and things like that.

Q. Did you intend that King Features would continue to be a customer of International's after—

A. We didn't know.

Q. Did you intend that?

2034 A. Did we hope for it?

Q. Yes.

A. We thought that, knowing Nicht, the kind of guy he was that he would give his business to the guy that would give him

the best price. We thought we would give him the best price, we thought we would get the business on that basis.

Q. At that time Mr. Gorman was negotiating a contract for a ten-year period with Mr. Nicht, is that correct?

A. Right.

Q. That contract would tie up King's business for International?

A. If it was signed.

Q. If it was signed.

A. If it was negotiated and signed.

Q. Were you anxious for him to sign that contract with International?

A. Naturally.

Q. Why?

A. Because he had some business, we wanted the business.

Q. Whose business did you want?

A. We wanted King's business.

Q. Through International?

A. Any way.

Q. Did you also want King's business in Greater 2035 Buffalo Press?

A. Sure we did.

Q. Nicht insisted that you put into a letter a commitment or an understanding—strike that. Nicht insisted that you put into a letter your agreement that Greater Buffalo will purchase International Color Printing Company, is that correct? That is in paragraph one?

A. About that way, yes.

Q. And he then says—you then said: "And assume a printing contract which is presently being negotiated between King Features Syndicate, and International Color Printing Company." What did that contemplate?

A. It didn't mean anything, Greater Buffalo Press didn't assume it—

Q. I know they didn't At the time was there conversation about Greater Buffalo assuming obligations of the contract that King was then negotiating with International?

A. Did Mr. Nicht of King Features know that we were negotiating with International to buy the printing plant; yes, he knew about it.

Q. How do you know that?

A. Gorman, I assume, told him and maybe I told him. He knew about it, anyway.

2036 Q. Had he known about it for some time?

A. I think so, yes.

Q. You said before that he introduced you to Mr. Gorman, is that correct?

A. He actually didn't introduce me, he called on the phone, as I remember, and told me—told Joe Gorman I was coming over to see him.

Q. And did you have any discussions with Nicht then about your buying International?

A. I don't think I did. I mean, the least you told Mr. Nicht, the better you were off.

Q. Well, in any event, that conversation with Mr. Gorman was in early '54—early '55?

A. Early '54, yes.

Q. Or late '54. You had been negotiating with Mr. Gorman over a period of time, is that correct?

A. That was the first meeting in 1954 that I talked to Gorman about it.

Q. 1954?

A. I think it was late in 1954.

Q. And the sale was some time in June, the sale was on June 25, 1955?

A. Right.

Q. Over the period of time between late 1954 and June 25th, 1955, had you had frequent conversations with Mr. 2037 Gorman about the deal?

A. I don't know how frequently they were. We had conversations, yes.

Q. And you remember meeting him here at the Hotel Statler in Buffalo concerning the transaction?

A. I could have.

Q. Do you recall whether or not while that was going on did you authorize him to negotiate a contract with King concerning International? Did you discuss it with Mr. Gorman?

A. Well, say that again.

Q. Did you discuss with Mr. Gorman his renewing a contract with King for a long period of time?

A. Sure.

Q. That was while you were discussing with him the purchase of International, is that correct?

A. Sure.

Q. Did you discuss the price that Gorman would charge King during the purchase of International?

A. You mean the prices that Gorman would charge King?

Q. That is correct.

A. No.

Q. You didn't discuss that at all?

A. No. Didn't know a thing about it, as a matter of fact. Gorman told me very frankly that the prices we are going to get from King are exactly the prices we were getting in the past, so there was no question what we were going to get.

Q. You did know, you did contemplate, you did make your business transaction believing that if the contract was successful between International and King, International would get the same price it had been getting in the past, is that correct?

A. What is this?

(Thereupon the last question was read by Reporter.)

Mr. RAICHLE: What business transaction?

Mr. BERNSTEIN: I'll withdraw the question.

By Mr. BERNSTEIN:

Q. While you were negotiating with Mr. Gorman shortly before June 25, 1955, was it your state of mind that if King signed a contract with International, International would get the same prices that it had gotten in the contract—

A. We didn't talk about that. It was my state of mind that if Gorman—that we could take the business that Gorman had been doing in the past and not making any money on, 2039 and if we put our methods and machinery in there we would make—we could make money at the same business, on the same business, on the same rates.

Q. You were not concerned whether he got the same or higher, you were concerned that he would get less, weren't you?

A. No, we were not concerned. We didn't expect we were going to get anything less.

Q. You anticipated the lowest he would get would be the same and if he could get more, so much to the good?

A. That was a reasonable anticipation, that we would get no worse than the same.

Q. Getting back to the conversation you had with Mr. Nicht in paragraph one, Mr. Nicht asked you to put in your letter that: "The Greater Buffalo Press, Inc., will purchase Inter-

national Color Printing Company, and assume a printing contract which is presently being negotiated between King Features Syndicate, and International Color Printing Company." Did he mention anything to you as to why he wanted you to say you will purchase International Color Printing Company?

A. I don't think so.

2040 Q. Why did you include that in paragraph one? You say: "These are the provisions on which we are in agreement."

A. Why did I say what?

Q. Why did you say to Mr. Nicht, "We are in agreement that Greater Buffalo Press, Inc., will purchase International Color Printing Company"?

A. Because Mr. Nicht put that in the memorandum, that we were supposed to put in a letter.

Q. Now, we go to paragraph two: "The Greater Buffalo Press, Inc., and King Features Syndicate will hold, and continue to hold such contracts and business as the Greater Buffalo Press and King Features Syndicate presently have." What did that mean?

A. It meant to me that we were going to hang on to our business.

Q. What about King?

A. I assume he was going to try to hang on to his.

Q. He insisted that you put that into a letter?

A. I don't know whether he did. I think it's in that memorandum. It was sure understood that way, we were going to hang on to ours, he was not going to give anything away.

Q. That was the understanding you and Nicht had as a result of numerous conversations?

2041 A. That was the reasonable understanding we had; we were not going to give him anything, he was not going to give us anything.

Q. Was that understanding arrived at in the course of numerous conversations—

Mr. RAICHLE: No, it was arrived at in the course of pending negotiations.

Mr. BERNSTEIN: I object. I object, your Honor, to counsel's interruptions with the cross examination.

Mr. RAICHLE: I will interrupt as often as you ask an improper question.

Mr. BERNSTEIN: I respectfully submit that the question was not improper.

Mr. RAICHLE: It has been made clear that this letter was written in the course of negotiations which ended with the correspondence that I put in evidence where they said they could not enter into the contract and the negotiations were at an end. You are trying to make this letter a contract and agreement, it was talk about a prospective contract that the parties could enter into.

2042 The COURT: I will resolve that at nine thirty.
(Thereupon the court was in recess at 3:00 p.m.)

* * * * *

2043 PROCEEDINGS OF JUNE 28, 1967, COMMENCING AT
9:30 A.M.

JOHN WALTER KOESSLER, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

By Mr. BERNSTEIN:

Q. Mr. Koessler, I show you Exhibit P-16, a letter dated June 13, 1955, from you to Mr. Nicht, in which in the first paragraph you said: "These are the provisions on which we are in agreement, and which should be included in a contract between King Features Syndicate and the Greater Buffalo Press, Inc."

A. Yes.

Q. And we were discussing this yesterday and I believe it was stated that this was shortly before Greater Buffalo Press, Inc. took title to the stock of International Color Printing, is that correct?

A. Right.

Q. Now, inviting your attention to paragraph three, you said to Mr. Nicht: "The Greater Buffalo Press, Inc., and International Color Printing Company, will grant King Features Syndicate exclusive sales rights on all new business with 2044 these exceptions"—then you list four newspapers as exceptions. Do I understand this to be that as of this time, June 13, 1955, the understanding that you had with Mr. Nicht was that neither International, which you intended to buy, nor Greater Buffalo Press, Inc., which you then controlled

would do any printing on any new business for anyone else except those four newspapers, is that correct or is that wrong?

A. No, it didn't say that. It said that we would grant King—this is a letter—Nicht's proposal we contained in the letter—it says, as I understand it, we would grant him exclusive sales rights to sell printing; not that we would print exclusively for them.

Q. Right. Did that mean that on all new business, with those four exceptions, Greater Buffalo Press, Inc., would not take the contracts but King would take the contracts?

A. Yes. But these four jobs that are here were substantially the only jobs we secured of any importance.

Q. Tell us about those four jobs, the Philadelphia Bulletin, as of that time, who was printing for them?

A. They printed their own.

Q. And at that time was Greater Buffalo Press, Inc. 2045 soliciting their business?

A. Yes.

Q. At that time was King soliciting their business?

A. Yes.

Q. So the understanding was—as of June 13, 1955, the understanding was that the Philadelphia Bulletin would be Greater Buffalo Press' account if it secured it, is that correct?

A. No.

Q. What did it mean?

A. It meant we were going to continue to solicit the business for the Philadelphia Bulletin on our own account.

Q. How about King?

A. They could do that too.

Q. Either one could solicit?

A. Yes.

Q. With respect to other new business, Greater Buffalo Press would not solicit in competition to King?

A. There wasn't any.

Q. There wasn't any other business?

A. There wasn't any business we were interested in getting.

Q. Well, there wasn't any business you were interested in getting; there was other potential business?

2046 A. Not that we thought was possible to get, no. These were the accounts which the future contained or which were contained in the future. This was the future to the business.

Q. The Des Moines Register Tribune, who was printing that at that time?

A. They printed their own.

Q. Was Greater Buffalo Press, Inc., soliciting?

A. Yes, and we still are.

Q. Was King then soliciting?

A. Yes.

Q. Who has that contract today?

A. They are still printing their own.

Q. The Oklahoma City Oklahoman, who is printing that?

A. They were printing their own.

Q. Was Greater Buffalo soliciting their business?

A. Yes.

Q. Was King?

A. Yes.

Q. Who got the contract?

A. They still print their own.

Q. The Pappert Group of Newspapers, who was printing it at that time?

A. Acme Color Printing Company.

Q. Was Greater Buffalo soliciting that business?

2047 A. Yes.

Q. Was King soliciting that business?

A. Yes.

Q. Who ultimately got the contract with the Pappert Newspapers?

A. We, Greater Buffalo Press.

The COURT: Where is that located, Mr. Koessler, that paper you spoke of, Pappert?

The WITNESS: Pappert was actually a sales agent or syndicate and he served a large number of small papers.

By Mr. BERNSTEIN:

Q. In what part of the country?

A. In the southwest, Texas, Oklahoma, New Mexico, in that Texas area.

The COURT: Lufkin picked that up in due course?

The WITNESS: That is right.

By Mr. BERNSTEIN:

Q. Now, I invite your attention to paragraph four. You said to Mr. Nicht on June 13, 1955, that you are in understanding with him and that it could be included in a formal contract that

2048 "The cost to be charged King Features Syndicate for printing four color, standard size, comic newspaper supplements in individual runs of 200,000 or less, is the price provided in the contract between International Color Printing Company and King Features Syndicate." Now, did that mean—did paragraph four mean to you that for runs of 200,000 or less that were going to be printed by Greater Buffalo Press, Inc., you were going to charge King the same price that was then included in the contract they then had with International Color?

A. No, what this meant was that the prices that International Color Printing Company was then charging King—it went back for several years—would be the same prices.

Q. That who would charge?

A. That International would charge.

Q. That International would charge or Greater Buffalo?

A. International.

Q. This was at a time that you had not owned International as yet, is that correct?

A. We were negotiating to buy it.

Q. Right. So your discussions with Nicht was that if you bought International, then the price that International would charge King would be the same price that had been in 2049 existence up to that time?

A. We were not doing that. We said that would satisfy Greater Buffalo, but whether it would satisfy Mr. Gorman was something else.

Q. Well, if after Greater Buffalo owned International, if it satisfied Greater Buffalo, that was all that was necessary?

A. No, it wasn't. Mr. Gorman ran that plant and continued to run it, we never interfered with him.

Q. How long did that continue?

A. Always.

Q. Until today?

A. Until today.

Q. So in your method of operations, Mr. Gorman is in charge of the pricing at the International plant?

A. Yes.

Q. Does he have any other duties; is he in charge of the pricing at Sylacauga?

A. No.

Q. Does he have any duties in connection with Sylacauga at all?

A. No.

Q. When did that stop?

A. It never started.

Q. Can you recall what the discussions were with Nicht concerning the contract that King was negotiating with
2050 Gorman for International that required him to ask you to put this paragraph four in P-16?

A. I can't remember, any more than he knew that we were negotiating to buy International Color Printing Company, I suppose he wanted to have some assurance that we would not stick him up, or International wouldn't, that the situation would be more or less as it was. I imagine that is what went through his mind, I don't know.

The COURT: Excuse me. Mr. Koessler. I appreciate that you are very familiar with all this. I am trying to get a grip on it. I want to ask you what probably are a couple of simple questions.

Now, yesterday somewhere during your talk you were speaking of Nicht, and that he was a tough competitor of yours, I understand, and you used such phrases as he could cause you trouble, and various things. Now here, as I get the story, International run by that family down there, was not doing well, but

King had a contract with them to print color comics for
2051 for them, which had a few months to run?

The WITNESS: That is right.

The COURT: Now, you were going to buy that, you were interested in buying that to refurbish the plant, and you hoped by better mousetrap practices to make some money, you could do it cheaper and faster, and so forth?

The WITNESS: Exactly.

The COURT: I am a little fuzzy on how you and Nicht got together over this. You knew, of course, of the contract that King or Nicht had with International to print their stuff for a few more months, and then you were going to buy it, is that correct, you were negotiating to buy it?

The WITNESS: King knew we were, yes.

The COURT: I don't see how you came together, or why, to discuss the future. Could you tell me that?

The WITNESS: Yes. I had known Nicht. Greater Buffalo printed material for Nicht. The material that—for Nicht and King Features—the material we printed for him was
2052 taken out of International Color Printing Company. They were supposed to be his exclusive printers but if

he could get a better price, he would go to them. He went to us and I came to know him in that way, and I came to know something about the business of International Color in that way. We knew something, we knew the jobs they had and the production difficulties that were involved in those jobs, and we thought we could solve those production difficulties and make money in that plant as it was presently operating.

The COURT: With a view of hoping that the future would be as smooth as possible, you began to discuss International's future work for King, as these letters bear out, is that correct?

The WITNESS: Yes.

The COURT: All right.

By Mr. BERNSTEIN:

2053 Q. You were discussing that with Nicht over a period of several months, is that correct?

A. But not too frequently, no.

Mr. RAICHLE: I'm sorry, I didn't hear that answer (Thereupon the last answer was read by Reporter.)

By Mr. BERNSTEIN:

Q. Now, inviting your attention to paragraph five. You said to Mr. Nicht: "The cost to be charged King Features Syndicate by the Greater Buffalo Press, Inc., at its Buffalo and Dunkirk plants, for individual runs of four color, standard size, comic newspaper supplements is \$5.21 per thousand." Now, was that more or less than what International had been charging Mr. Nicht?

A. I don't know. It is an entirely different basis, an entirely different plan.

Q. In any event, the purpose of paragraph five was that you contemplated that King—in addition, that King was going to have a contract with International that then provided that King—that International would be its exclusive printer? Does this conform to your recollection, I think the contract pro-

vided that 25% of the business King could have printed elsewhere, is that correct?

A. Yes.

Q. So—

A. But they never did, except in these instances I told the Judge about.

Q. Right. Paragraph five contemplated that when a new agreement would be put into effect on virtually the same terms as the old agreement, that Greater Buffalo Press would also do

printing for King, not only at the International plant but at its Dunkirk and Buffalo plants, is that correct?

A. Yes. Mr. Nicht—this had to do with runs over 200,000.

Q. The first thing is, does that first part that I have just read pertain to runs over 200,000?

A. Right.

Q. Or runs under 200,000?

A. Over 200,000.

Q. Excuse me, Mr. Koessler, I think you are mistaken. Would you please read the next sentence to yourself and see if that changes your mind?

A. Yes, that is right, 200,000 or less.

Q. So that for the sake of the record——

A. Yes, go ahead.

2055 Q. —would you state what your understanding of paragraph five was?

A. Well, it is a scale of prices based on printing a run of 200,000 or less.

Q. To be printed by Greater Buffalo Press, Inc., in its Buffalo and Dunkirk plants?

A. Yes.

Q. And then the next sentence: "The cost of additional thousands beyond the 200,000 figure is to be charged at the rate of \$4.67 per thousand." So that you had a lower price for runs beyond the 200,000 figure, is that correct?

A. That is right.

Q. Let me digress a moment. Would you please explain to the Court why the price is lower for runs over 200,000, why it is less costly for Greater Buffalo Press, Inc., to do runs over 200,000?

A. Well, the larger the run, the lower the cost per M. The reason for that, to make—to produce any run, whether it be 5,000 or a million, you have to prepare these printing plates, you have to register them, you have to do what they call make ready. It is what they refer to in the machine tool business as tooling up, you've got to get the tools. Once you have the tools,

then you go on and print, you can print endlessly.

2056 The COURT: It is the same thing in any other business?

The WITNESS: Exactly.

By Mr. BERNSTEIN:

Q. Had Greater Buffalo Press, Inc., been printing more large runs than smaller runs up to 1955?

A. That is what we were interested in, the large runs.

Q. How about International, what were they printing mostly the small runs?

A. They had to take what Nicht gave them.

Q. What was that?

A. It was a lot of small runs; very, very difficult to print economically.

Q. That had been that way up to June 13, 1955?

A. Yes.

Q. Now, I invite your attention to paragraph six, page two, and there you say: "The cost to be charged King Features Syndicate by the Greater Buffalo Press, Inc., at its Lufkin, Texas plant for individual runs of 200,000 for color, standard size, comic newspaper supplements is \$5.15 per thousand." So, Mr. Koessler, was the purpose of that provision, the result of your discussions with King, that you had planned to 2057 open a Lufkin, Texas plant, and that when it was opened you would do printing there and this would be the price of the printing, \$5.15 per thousand?

A. Yes. Nicht knew at this time we were going to open a plant in Lufkin. We were interested in getting his business if we could, and these are the prices we gave him, the basis on which we would take the business. The difference in the price between five twenty-one and five fifteen I think is the difference in the cost of newsprint down there.

Q. All right. Then the next sentence of paragraph six I won't take the trouble to read it in the record, read it to yourself, and the next sentence provides a price for printing at Lufkin, Texas for King Features by Greater Buffalo Press, Inc., for runs over 200,000 at \$4.61 a thousand, is that correct?

A. Yes.

Q. Sir?

A. Yes. No, that is the cost of additional thousands beyond 200,000.

Q. Right.

A. Not the cost of runs over 200,000, but the—in other words—

Q. If you had a 300,000 run, for the first 200,000 you would pay \$5.15 a thousand, for the additional thousand you 2058 would pay \$4.61 a thousand?

A. That is right.

